DOCUMENT RESUME

ED 096 555 CG 008 965

AUTHOR	Cohen, David K.; And Others
TITLE	Consumer Protection in Public Education. Final Report.
INSTITUTION	Center for the Study of Public Policy, Cambridge, Mass.
SPONS AGENCY	Office of Economic Opportunity, Washington, D.C.
PUB DATE	Oct 71
NOTE	272p.
EDRS PRICE	MF-$0.75 HC-$12.60 PLUS POSTAGE
DESCRIPTORS	*Consumer Education; *Educational Policy; *Family School Relationship; Power Structure; *Problem Solving; Program Guides; Research Projects; *Student School Relationship
IDENTIFIERS	*Consumer Protection Education

ABSTRACT

This report advances several proposals for protecting the educational interests of parents and children. The thrust of these proposals does not begin with a particular idea about how the interests of families might better be served by the schools, but rather seeks to determine whether there are mechanisms which might achieve that end. Consumer protection techniques are discussed, in detail, as viable forces to help change the position of families vis-a-vis schools. Each proposal is presented as having merit and as a potential complement to the others: however, each can stand independently as an approach to protecting the interests of families. Some areas discussed are: (1) the need for managing grievances between the parents and the schools, (2) the need for legal assistance when adjudication of grievances becomes necessary, and (3) the need for organization of both parent and children's groups. (Author/PC)

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CONSUMER PROTECTION IN PUBLIC EDUCATION

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A final report to the Office of Economic Opportunity from the Center for the Study of Public Policy, Cambridge, Massachusetts, under OEO contract, CG-8542-A/1.

October 21, 1971.

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PREFACE

This report advances several proposals for protecting the educational interests of parents and children. That they are treated unfairly in their relations with schools we take as a fact. We do not seek to determine whether there is a problem, but rather to specify its character, and to identify mechanisms which offer some promise of righting the imbalance between individual families and a massive public monopoly. The past decade has witnessed growing concern about consumers of public goods and services. There has been considerable analysis of what is wrong, but little work on how the imbalance between consumers and government might be redressed. In this report we attempt to begin such work.

A word on the way we went about this effort may help readers to better understand and use it. We did not begin with a particular idea about how the interests of families might better be served. Rather, we sought to determine whether there were any mechanisms -- short of tuition vouchers or radical decentralization -- which might achieve that end. This approach had several results worth mentioning.

First, we began with an exhaustive effort to identify the available approaches to consumer protection, and to explore their usefulness. Not surprisingly, most of the possibilities seemed unattractive for one reason or another. Since it seemed unduly burdensome to explain in great detail why many ideas were rejected, there is a staggering amount or work which is not reflected in the body of this report. Some of it is contained in the appendices, however, and our reasons for discarding many of the alternatives are summarized in the first chapter.

Second, our desire to present a relatively brief report dealing specifically with the things which we think ought to be done prevents us from dealing thoroughly with some of the broader issues. Chief among these is our assessment of the general prospects for increasing the fairness and respect with which schools serve families. At bottom, we believe that the force which can most surely change the position of these consumers vis-à-vis schools is active consumer organization devoted to that task. But, as will be made clear at several points in this report, we are not sure that government can help organize consumers, nor is it clear what form such help would take. These considerations lead us to attend primarily to those things which government can do, even in the absence of powerful consumer organization. This is not because we think that the suggestions which follow are more important than consumer organization, nor because we think they are necessary precursors to it. Neither of these is true. It is simply because there are several approaches to consumer protection in education which might be helpful, even in the absence of vital consumer organization; they might help to stimulate further development or they might not, but in themselves they seem worth exploration.

Finally -- as is probably clear by now -- the mechanisms discussed in the body of this report are not a unified strategy for protecting the educational interests of families. While each proposal has a good deal of merit and may complement the others, each stands independently. What is more, they are proposals for experimentation. They are not advanced as a solution to the world's problems in education, but as those few approaches to protecting the interests of families which seem sufficiently promising to be tried out.

CHAPTER I: PROTECTING THE FAMILY'S INTEREST IN PUBLIC SCHOOLING

The major direct consumer of elementary and secondary education services is the family. It is the children who must spend ten years or more in school, and gain the competence and credentials to participate in our society. It is their parents who are most concerned about securing training and happiness for their offspring. But the public schools are a monopoly supplier of education. With the exception of purchasing a private education or a home in a different neighborhood or school district, families have little choice in education and less influence on how schools operate. For those without the wherewithal to purchase alternative education, this leaves only attendance in the particular school and classrooms assigned by public school authorities. Children must heed the particular teacher to which assigned, or face a variety of discipline from which the family[1] has little appeal.

Most public schools provide no regular and fair means for receiving and redressing the grievances of families; nor are complaints or inquiries by parents or children encouraged by school authorities. Public schools are typically not open to informal pressures which might be asserted by individual children,or their parents, or groups of families. In fact, informal pressure in support of the family's independent interest in education is discouraged.

Families also lack much useful information on how schools perform, what variety of schooling exists, and how schools compare to each other, even within their own communities. Families do not know how schools compare on their students' tested achievement, the numbers of drop-outs and failures, and the reactions of other children. They do not know how students are graded, tracked, promoted, failed, disciplined, praised, or excluded; nor what criteria and processes are used to make these important decisions; nor how they vary among schools. Without such information families are in no position to make reasoned complaints, decide what is important about education, know what is wrong about their own child's school or figure out what might be subject to redress. By hoarding this information schools maintain barriers to the family's independent knowledge and to its assertion of an independent interest.[2]

In theory parents may take their grievances to the local school board. But local boards are often unwilling or unable to respond. This is due in large measure to their almost exclusive reliance on the professional school staff they are supposed to govern. Just as schoolmen have monopoly control over information relative to the family, they have the same control over information relative to the school board. Crucial school decisions are inaccessible both to the parents of the affected child and to the school board. In practice this often means that the school board, which is in charge of governing, acts only to legitimize the decisions of its staff.

In theory consistent failure of school boards to respond to their constituencies -- including failure to respond to grievances -- can be met by unseating members and replacing them through the political process. But the political process (usually election, but in a few instances appointment) is a clumsy, expensive, and unlikely way to permit families to assert their particular interests in their childrens' education. The interests of the family are necessarily diluted in any elective or appointive process by all others who vote, and especially by politically active special interest groups (such as educators and their organized associations).

In theory,parents also may participate in school affairs through parent associations. But in practice such associations are often an instrument for legitimizing the school administration; they merely provide teachers and administrators an opportunity to play show and tell with parents. Moreover, such parent associations provide little opportunity for the poor to gain leadership positions and to voice their concerns. The almost universal objection of school authorities to the development of independent Title I ESEA parent advisory councils is indicative. These councils are suppsed to be made up primarily of the parents of the poor, and are supposed to have a considerable voice in the funding and operation of Title I programs designed to benefit directly only their children. But at every stage local school officials have resisted pressure to permit such participation.

Similarly, in theory, student councils are designed to provide students with an opportunity to make their views known about school affairs. But when such elected student groups become active and independent, school officials typically show unease, and devise means either to keep the student council trivial, or to suspend its operation.

In sum, the schools and the education professions now control the fate of children in school. Many crucial decisions about children are made in a closed fashion, with little or no consultation. The criteria for such decisions are typically unclear and of uncertain worth. While there is great potential for unfairness, the decisions are rarely publicized or open. There is little chance for redress of grievances, either from such decisions or from other acts of school officials. Redress or appeal is so seriously discouraged as to be virtually impossible. And finally, information about such things -- about how schools work, how they perform, or how they compare -- is jealously guarded. Simply finding out what happens is often a monumental and defeating task.

In our view three courses of action are required to deal effectively with this situation. First, the school professionals' stranglehold over information should be ended by making available relevant information about schools. Second, steps should be taken to encourage and secure redress of family grievances; this would require the establishment by schools of a fair, regular and effective means of receiving and resolving complaints. Finally, families need independent assistance to use the information and complaint procedures, and to exert pressure on schools in support of their educational interests.[3]

The real problem, of course, is not simply to identify these three areas of action, but to determine whether and how government could usefully contribute to their realization. As a general matter, we are not optimistic about the extent to which government action will right the fundamental imbalance in relations between schools and consumers. Our investigations seem to show that the chief barrier to the protection of consumers' interests in education is the absence of powerful and sustained consumer organization. While this is a situation to which government contributes in many ways, it is by no means clear that local, state, or federal agencies would provide serious and sustained support for efforts to organize consumers of education, if the results would often produce conflict with local public schools.

There is, however, much more persuasive evidence that government can assist and legitimize existing consumer organization.

But if government may not be able to create consumer organization de novo, there are several other useful steps which can be taken:

- -- First, mechanisms could be established to promote fairer procedures in internal school administrative matters, and to assist in recognizing and acting on consumer grievances.
- -- Second, consumers could be provided with external and independent assistance in identifying and pressing their grievances.

The first suggestion amounts to a form of administrative criticism -- something like an ombudsman, an inspector general, or a General Accounting Office. Such an agency could serve a board of education in several ways: to provide an independent check on the schools' line administration; to provide a mechanism independent of the line administration for helping to route and resolve complaints; and to provide a more independent source of information to citizens and school boards.

Our analysis suggests that the success of such an agency does not depend directly on the existence of consumer organization, but on the mandate of a legislative body. If a local school board -- which is the basic legislative body for public education in the United States -- decides to support such an agency, then the chances are that if it fails it will not be for lack of political will. The question is whether it would prove viable within the school system and useful to consumers. We believe the chances for an affirmative answer are good.

The second suggestion -- external, independent assistance for families -- is premised on the notion that many important consumer needs could not be met by an agency which, while impartial, was still part of the school system. There are many cases in which the interests of families and schools are so disparate that some sort of adversary relationship is inevitable. And while the forum and procedures might be provided by an internal administrative critic, an ombudsman could not at the same time be judge and consumer advocate.

This much probably would be obvious to even the most casual observer. The question is not whether consumers should have independent assistance, but whether there is any viable way for government to support it. Our conclusion is that none of the usual forms of lay advocacy are desirable. We do not say this because lay advocates for consumers might do a poor job, but because we can think of no solid institutional base for them. There are no convincing institutional precedents for laymen assuming the burden of adversary relations with government agencies outside the political process. And there is no professional base for such activity, something which would be necessary for the permanence and protection such advocates would require. Without a professional base, advocacy lacks the foundation necessary to ensure ongoing service.

More or less by a process of elimination, then, we conclude that the only viable basis for consumer advocacy in education for the forseeable future is the legal profession. The law provides the only solid professional foundation for extra-political adversary relations in American society, and it is the only profession which would provide a fair degree of legitimacy for conflict between citizens and government. The relative success of the Neighborhood Legal Services Program -- and its support from some rather conservative regions of the bar -- is persuasive evidence of this.

If consumer advocacy for the poor is to be harnessed to the legal profession, this means that its institutional base would be the Neighborhood Legal Services Program. But is is important not to lose sight of the fact that most of the conflict between schools and consumers would not be legal in character, and it would be a mistake to channel such non-legal matters into legal procedures and forums. Rather, it would be desirable to employ non-legal or para-legal assistance and non-judicial forums.

What we have in mind, then, is the development within local Neighborhood Legal Services offices of an Education Attorney's Office, which would provide advice and assistance to families. The office would be independent of the schools, and thus would be appropriate when disputes could not be resolved without some sort of adversary proceding. But the office's work would heavily involve matters that trained non-lawyers could manage -- which means that many of the employees could be laymen, or para-legal personnel.

These two proposals seem sufficiently sound and promising to be tried out. We think they should be established on an experimental basis, so that more can be learned about how they work, and whether their theoretical promise bears up in practice. The next two chapters (II and III) of this report discuss each proposal in more detail, and the following chapter (IV) outlines the experiments we think would be appropriate and discusses what should be learned from them. It is no exaggeration to say that these proposals for consumer advocacy and administrative criticism are the heart of this report.

They are not, however, all of it. There are two other proposals which seem sufficiently promising to bear further exploration. But we are not prepared to recommend that OEO implement them because more needs to be known. As a result, we will suggest that more time be spent investigating two possibilities:

-- First, providing technical assistance and support services to existing local groups concerned with education, to determine whether such help would promote effective and lasting consumer organization.

-- Second, creating a national organization -- a Childrens' Defense Fund -- which would use litigation, research, and educational techniques to focus attention on problems experienced by consumers of child care services.

The rationale for the first is relatively straight-forward. While government may not provide the direct motive force for organizing consumers, it is not unreasonable to suppose that it could recognize and support existing organizations. Some groups which seek to advance the educational interests of poor families exist already -- Title I ESEA parent advisory boards, the occasional active PTA, and a variety of local community organizations. It is possible that assistance would make them more effective and enduring. But at the moment we have little real notion of how many groups there are, where they are, how likely it is that they could be helped, and if they could do what would be required. If it turned out that there were a fair number of such groups and if there were some evidence that they might profit from assistance, we would propose efforts to provide the assistance and find out what happens. But first a bit of time is needed to answer these preliminary questions.

The rationale for the second proposal is no more complicated. It is simply that most problems which families have with schools or other child care institutions are the result of structural, not accidental factors. They occur in many school districts, and differ little from one district or state to another. Thus, efforts to illuminate the problems in one state would be likely to have ramifications in others; solutions devised for one school idstrict could well be applied to others; litigation framed for one place would doubtless be applicable elsewhere.

If this is true, then a national organization -- it might be called a Childrens' Defense Fund — could have an enormous impact. For a range of school-related issues it could provide focus and leadership which presently does not exist, and it might have a striking multiplicative effect at the state and local level. And there are a variety of issues, in addition to those directly concerned with schools -- such as day care, juvenile facilities maintained by state agencies, and juvenile courts -- which badly need attention.

But while we are pretty thoroughly convinced of the utility of a Childrens' Defense Fund, several questions need exploration. One is programmatic: what should the focus of its activities be? Another is whether the organization should focus activity at the national level, or should it organize subsidiaries at the regional or state level? A final question is both fiscal and political: what should the balance of support be between private and government funds? These questions should be answered before proceding further with the idea, and a modestplanning grant should convey the costs of the necessary work.

These, then, are the four proposals which will be taken up in more detail in the following chapters. But since we arrived at these proposals by eliminating many others, it may be helpful to discuss the range of options with which we began, and explain why certain approaches were discarded.

We began by attempting to identify the range of available strategies for protecting the educational interests of families. By examining past experience with the protection of consumer interests we sought to identify the archetypal approaches to consumer protection. At the outset of the inquiry we did not want to proliferate examples of particular mechanisms, but to define the main alternatives, determine what they implied, examine what differentiated them, and decide which were feasible.

We identified two apporaches at the outset which seemed unlikely to be very useful in education: establishing administrative agencies to regulate schools' operation, and creating agencies to mediate conflicts between schools and consumers. Both approaches have been widely used in other areas, but for different reasons both seemed inappropriate.

Administrative regulation assumes that the main requirement for protecting consumers' interests is countervailing bureaucratic authority to oversee and set performance standards for the enterprise in question. Most experience with this approach derives from government efforts to regulate quasi-public monopolies (especially utilities), or broad areas of business activity (trade, power, communications), and it is well known that the regulatory efforts have not been very successful. While there is little direct experience with this approach where one government agency seeks to regulate another, it seems unlikely that government would be better at regulating itself than it is at regulating private interests. The closest relevant approximation of government self-regulation is the activity of state agencies in areas such as education, welfare, or public health. These agencies play a mainly regulatory role, but in education, at least, they are generally ineffective.

It is also worth noting that the individual consumer's interest is typically not the prime concern of such agencies. The regulatory agencies actually mediate a variety of highly organized interests, which include the government and other corporate consumers of the goods or service in question, but such agencies rarely deal with the problems of individual consumers. The very structure of public utilities commissions, for example, requires that consumers present themselves in the form of an organized interest group if their concerns are to be taken into account.

Finally, regulatory activity presumes that performance and production standards for the enterprise or activity in question are relatively clear and easy to define. Educational standards are not easy to define, however, and there is no reason to believe they will get easier in the near future. Thus, given all the other difficulties, administrative regulation seemed a questionable approach to protecting the family's interest in education. (A full discussion of this approach is provided in Appendix A.)

The other unpromising approach to protecting consumer interests was mediation. Although this is a classical mechanism for the resolution of disputes, only recently have mediation agencies turned to conflict between government agencies and their clients. Typically, mediation has been employed in disputes between governments, between labor organizations and management, and between corporate entities.

But mediation provides a serviceable method of dispute resolution only when certain conditions obtain. One seems to be a long-term relationship with considerable elements of symbiosis, where concessions and victories signify less than absolute defeat or triumph to the parties. Another appears to be something approaching parity of power, or at least sufficient power on each side to seriously damage the other. A third condition -- which in part may be a consequence of the first two -- is the acceptance of rules and procedures for the resolution of disputes, and often the establishment of regular mechanisms (and the assignment of staff) to attend to such matters. A final ingredient -- most often found in American labor-management relations -- is the expression of a clear governmental interest in dispute settlement. The most powerful example of this, of course, lies in the Depression legislation which legitimized labor organizations and established a framework for the settlement of disputes. And this is an area in which there is almost constant government intervention, whether informally to prod one side or another in some dispute, or formally (as in the case of railroads, for example), to coerce settlements which one or more of the parties may not want at all.

It is apparent that these conditions do not exist in relations between parents or community groups and schools. And it seems virtually certain that absent these conditions mediation could not be successful.

But while these two approaches to consumer protection seemed unsatisfactory by themselves, they are not wholly irrelevant.

The purpose of administrative regulation, after all, is to use government intervention to somewhat shift the balance of forces in favor of the consuming public, and that purpose is common to al the mechanisms we have explored. It also is clear that mediation would be an important element in any effort to resolve individual grievances, whether in adversary procedings or in the processes internal review.[4] As a result, while we decided that these two approaches were unsatisfactory taken alone, they contain important elements.

A third approach which we explored was information. This strategy assumes that the minimum requirement for protecting consumers' interests is providing full and fair information on the product, activity, or enterprise in question. Presumably this allows consumers to make whatever judgments and take whatever actions are necessary to protect their interests. It has been most widely used in government and private efforts to deal with private sector activities, but has not been widely used in governmental efforts to cope with either quasi-public or public activities.

This approach also assumes that the resolution of disputes between consumers and schools can be managed through existing political or administrative channels. Informational approaches to consumer protection, then, are not a mechanism for resolving disputes, but a way of providing more illumination for the existing mechanisms with which policy is made and disputes resolved. It seems clear that information is a necessary condition for any effective efforts at consumer protection. But is seems equally clear that, in and of itself, it is not a strategy for protecting consumers.

One reason for this is that information does not now flow freely, and it will never do so without considerable prodding from inside and outside the schools. New organizations are needed to do the prodding. Another reason is that informational needs change as issues and circumstances change: it is difficult to identify an enduring common core of information required to protect consumers' interests in education everywhere and at all times. Organizations are required which can seek and use whatever information seems appropriate. As a result, information by itself was discarded as an approach to consumer protection in education, although it figures prominently in several of our proposals. (A full discussion of information approaches is contained in Appendix B.)

This left three main approaches to protecting the family's interest in education -- administrative criticism, the existing system of legal redress, and various forms of lay advocacy. Although each has important limitations, as a group they seemed more promising, and better adapted to the situation which obtains in schools.

Administrative criticism is a function carried out within many national governments and agencies: in the United States the General Accounting Office acts as Congress' watchdog on administrative execution in the Executive Branch; the Army has an Inspector General to police internal administrative matters; and the Bureau of the Budget performs some investigatory work in its role as the President's supervisory staff for operating agencies. In Scandanavian countries this work has been gathered into the office of an Ombudsman, and in other nations similar offices have developed. Although differences abound, the most persistent common elements are resolution of individual grievances and general administrative oversight. That is, this approach centers on an administrative role -- the internal scrutinizer of policy execution. Its effectiveness does not arise from major enforcement power. Ombudsmen and inspectors usually do not have the authority to enforce laws, but rather the authority to review administrative practice, investigate apparent or alleged administrative abuse, and report the findings. In a sense, the authority lies in the power of information, but there is more here than first meets the eye. For one thing, such information is particularly potent because the critics derive their authority from the same legislative or executive body as do the operating agencies that they scrutinize. Inside government, therefore (and usually outside it as well), such critics must be taken more seriously than the occasional journalistic muckraker. To put it differently, such critics are agents of the state rather than of the unorganized public, with all the weight (and restraints) which that typically carries. It is the source of the information, not just the information itself, that carries authority.

A second point is worth mentioning about the authority of administrative critics: it is often so considerable that it produces a greater willingness to settle complaints or resolve grievances informally than would be the case if the critic were external. Administrative critics repair deficiencies, settle disputes, and negotiate individual grievances because the alternative (exposure of administrative deficiencies) often seems more onerous to bureaucrats.

As a result, while the grant of authority to an administrative critic is modest compared with what is involved in a regulatory agency, the results may not be. But administrative critics are inadequate vehicles either for making new policy or for resolving serious policy disputes. They are not substitutes for legislatures or executives, but function well only in the relatively restricted area of policy implementation.

Finally, and perhaps most importantly, even the most successful administrative critics would not provide the full range of assistance consumers of education require. Many disputes could not be resolved without some sort of adversary proceeding because there are genuine conflicts between the interests of schools and families. And many consumers will need or want assistance which is clearly independent of the schools.

As a result, our attention turned to various forms of advocacy for consumers. The main assumption underlying this approach is the notion that the imbalance of power between agencies of the state and their clients is so great that consumers need active and partisan assistance. Indeed, consumer advocates may not be an alternative to any of the other approaches, but a condition for any of them to work effectively.

But the more our work progressed the clearer it became that there were many approaches to consumer advocacy, with important differences among them. Our first efforts were spent on various forms of lay advocacy. One model of this is the community organizations which have often sprung up in connection with action programs initiated by OEO. Neighborhood organizations of this sort usually occur along class and/or racial lines, are typically oppositional in character, are concerned with a considerable variety of broad policy issues, and seem to be least useful in dealing with the problems individuals have with agencies of the state. The organizations also seem to have the irregular performance characteristic of most informal voluntary associations on the fringes of the political system.

Another model of lay advocacy arises from special-interest organizing which recently has taken place among the poor. The principal examples of this are organizations of tenants and welfare clients. Organizations of this sort seem to be more effective in dealing consistently with the large and small individual problems which arise between state agencies and their clients, and in some cases they have been effective in dealing with major policy issues as well.

It goes almost without saying, however, that the major problem any advocate model presents, when regarded in the context of governmentally-sponsored consumer protection efforts, is political. Rather considerable strains arise when one government agency sponsors efforts by clients to attack the performance of another government agency. It does not seem at all sure that such an approach is viable. Indeed, it seemed probably that, lacking a solid institutional base, lay advocate organizations would continue to have brief and erratic histories.

Another problematic quality of the existing lay advocate organizations is their absence of any professional foundation. Although professionalism is certainly a mixed blessing (among other things, it is partly responsible for the problems between schools and their clients), it is clearly a phenomenon which can lend considerable stability to any social service enterprise. It is important to training and to on-the-job socialization;

it provides a way of managing complicated areas of experience; it offers a variety of work-related assistance; and professional organizations provide an important source of social, economic, and political leverage for those involved.

It may be that new professions will arise out of the community action experience, but thus far it appears that the only real development is the diversification of existing professions through the emergence of paraprofessionals. There is no evidence that any new profession is developing in which lay advocates might find a stable institutional home.

These considerations made us dubious about lay advocacy as an institutional approach to assisting consumers. This does not mean that we think lay advocacy is a bad idea -- we most emphatically think it is a good one. Nor does it mean that we think is wrong, in existing federal programs such as Headstart or Title I of ESEA, to provide independent assistance to parents, or to provide means for them to become involved in governing projects. Both are good ideas, and should be encouraged.

But our hesitation does mean that we are dubious about the ability of government to organize, establish, and sustain, organizations devoted exclusively to supporting lay advocates whose efforts will be directed at other government agencies. Experience has shown that such efforts are very difficult to sustain as part of operating programs with other purposes, and would be unattainable by themselves.

It was for these reasons that we turned to the existing system of legal redress as a possible basis for independent consumer assistance and advocacy in education. The law provides the only basis for adversary relations between citizens and agencies of the state. Since the protection of consumer interests would inevitably involve some elements of protracted conflict, it seemed clear that the law was an essential element of any consumer protection strategy. And while it is only recently that there has been any organized effort to deal with the relations between agencies of the state and their disadvantaged clients -- through some activities of the Neighborhood Legal Services program -- legal advocacy is part of a successful and highly developed system of dispute resolution.

It is, nonetheless, an approach to consumer assistance with important limitations. For one thing, the most viable part of the system of legal redress, the judicial process, seems to work best in resolving disputes in relatively simple matters such as personal injury, or where statutes or administrative codes set out clear criteria for judging proof, damage, and remedy. Even in such matters, however, it requires time and considerable resources. When time is short, resources small, and the points at issue relatively minor (as in courts of small claims, municipal courts, etc.), the judicial process does not work as well. It also appears to have grave limitations in dealing with major issues of policy, especially when standards of proof, damage, and remedy are murky.

These limitations argue against excessive dependence on the judicial process for resolving disputes between consumers and schools. But they are not sufficient reason to abandon the legal redress system as an approach to consumer protection. It may be possible to utilize the legal profession as a basis for consumer advocacy without taking most disputes into court.

This leads to our next reservation about the judicial process. Many of the disputes between consumers and schools which may involve some sort of adversary relationship probably would not require a judicial proceding. Many of them would be too trivial for such procedings; to frame the issues in judicial fashion would be to distort them, and make resolution more difficult. To involve courts in such disputes would tend to attenuate their role as the place of last resort in the resolution of disputes, and to unnecessarily legalize social relations.

But if most disputes would not rise to the level of judicial action, some would, and then legal assistance would be required. Even if most disputes were not well suited to judicial resolution, they would require adversary procedings of some sort -- most likely of an administrative nature. Legal training -- or something like it -- is important if consumers are to be represented adequately in such situations. All of this led us to the notion of using attorneys to supervise para-legal workers in providing assistance to consumers, and suggested the idea of locating such offices within the Neighborhood Legal Services Program.

* * *

This discussion suggests a few points which ought to be made in conclusion. First it is evident that we think that most of the possible approaches to consumer protection are, for one reason or another, not feasible. Second, we have a keen sense of the limitations on any of these approaches. Although we think a few of them are very promising, we do not believe that they can remedy many of the underlying problems in the relations between schools and their clients. These problems arise from the enormous imbalance in power between schools and consumers. If successful, our proposals would somewhat redress the power imbalance, and produce more fairness in the way schools treat parents and children. But they are limited measures, and it would be a mistake to see them as anything more.

Footnotes to Chapter I

[1] When we refer to the interests of the family, we are oversimplifying a very complex matter of different interests between parent and child. By speaking of the interest of the family, we are by no means resolving that issue; instead we are merely summarizing the interests -- identical, complementary, or conflicting -- of parent and child. And by speaking of the family's interest in education we do not mean to suggest that the interest of all families in their children's schooling is the same. Recognition of differences within and among families should serve as a reminder of the possible difficulties in analyzing the appropriateness of any proposal for changing the capacity of the family to assert and protect its interest in education. By recognizing the interest of the family as a unit, however, we do mean to suggest that it is independent of the interests of teachers, administrators, and other members of the community in schooling.

[2] Whether the insularity of schoolmen is a design to protect them from a weak knowledge base and vulnerability to outside political pressure, an indication of independent strength, or merely an example of bureaucracy so ingrown on itself that it loses sight of whom it is to serve, the result is the same: the family now has difficulty asserting and protecting its own interest in schooling. But this insularity -- and the power and reaction of teacher unions and administrative officials alike -- should be considered in shaping and implementing any strategy to secure the family's interest.

[3] Many education reformers, however, call for more fundamental change in the schools. Proposals range from choice among competing suppliers of education, school government closer to the people served, or a combination of both. These proposals have been much discussed elsewhere and are beyond the purview of this report. For purposes of this report we accept as given that education will continue to be provided by the existing system of public schools and that initial school attendance and teacher and resource assignments will persist. Within these constraints we examine what approaches are available to defend the family's interest in public schools.

[4] Another possible approach is improving the quality of the profession whose members provide services to consumers. While this seems worthwhile, it often defies precise description in theory or practice. In the field of public education it is especially suspect. Education lacks

the knowledge base and expertise of other professions -- we are still much in the dark about how children learn and how they can be taught. More important, proposals for improving professional status in education miss the point that is important here: they are efforts to increase the teacher's ability to minister to the family, not to serve it. But the true professional-client relationship requires that the professional enable the client to make informed judgments, and serve the client's self-defined interests.

CHAPTER II: THE ADMINISTRATIVE CRITIC

The schools do not encourage and resolve complaints from students and parents. The development of some method for encouraging and managing such grievances is essential to protect the interests of families. In this chapter we shall discuss whether complaints can be encouraged and managed internally by schools, examine alternative models of such complaint management agencies, assess their relative merits, and determine what assistance consumers would require to make full use of such an agency.

A. GENERAL CONSIDERATIONS

The primary business of a grievance management agency would be to assist in resolving individual complaints, either by guiding them into existing channels of information and redress, or by direct intervention on consumers' behalf. In addition, such an agency would provide feedback to school officials and consumers by short circuiting established channels and would identify major sources of administrative difficulty or injustice by developing an "institutional memory" from the aggregate caseload. A complaint management mechanism would also provide a forum and focus for consumer problems by stimulating hitherto unspoken grievances. If successful it might smooth school-consumer interaction and increase public confidence in schools.

In order to weigh the usefulness of such an agency, however, we must understand how it would work and what its limitations are.

A complaint management mechanism will work best when school officials either believe it to be in their interest to resolve the complaint or do not feel strongly enough about it to block a settlement. This may occur when the offending action, omission, or decision is inadvertant, or when a decision is not central to major policy. But when a grievance challenges either the established pattern of school power, or major policy, matters will begin to escape the authority of an internal complaint management mechanism. A grievance agency can help make the consumer-school relationship more personal and fair by dealing with policy execution, but it is not a mechanism for directly making policy or fundamentally altering the distribution of power.

This implies an agency that would operate primarily on a case-by-case basis, combining aspects of mediation, social work, counseling, and legal aid in a single role. Its business would run the gamut of student and parent complaints. These are likely to include teacher/student problems, homework and grading complaints, discipline problems (demerits, suspensions, expulsions, etc.), civil liberties, political rights, problems of student or teacher attitudes, and questions of mis-tracking and wrong assignment. All these may arise within the framework of an existing school policy. When a complaint challenges a policy directly the agency may help to bring these challenges to the surface, but can itself play only an advisory role in effecting change.

Since much of the effort of such a complaint management agency would be expended in resolving individual complaints -- through discussions and conferences with the involved parties, investigations of records and other evidence, fact-finding, and recommendation of appropriate courses of action and redress -- the agency must know where to go within the schools to get information, advice and action. How well the agency knows the schools and can work with school personnel is crucial. But where a complaint not be effectively referred to existing personnel or procedures, a complaint agency would be involved in a variety of activities to resolve disputes: initial investigations to determine scope and jurisdiction of the complaint; attempts at mediation and informal settlement; decisions on further action; more detailed investigations and fact-finding; reports and recommendations; more formal hearings; and appeal directly to policy makers. Where a complaint cannot be settled by referral to existing personnel or procedures, what is needed is not only knowledge of the school system and the respect of the parties, but, more importantly, innovative and persuasive suggestions for new programs and actions.

Given these roles and this business of complaint management, what archetypal approaches exist to handle the complaints of families about schools? Consider first the present system of managing complaints. It approximates a set of bureaucratic ladders. Parental complaints begin in a particular school, with a teacher or the principal. If the resolution is unsatisfactory, a parent can climb higher and higher through the different levels of the education bureaucracy -- to regional superintendent, assistant superintendent, superintendent, and school board.[1] Most complaints get no higher than the bottom levels. For the few parents who have the energy and will to take their complaints higher, past the "professionals" to the school board, the results are generally disappointing.

> Few boards have actually used such occasions as opportunities for evaluating professional work. The traditional response is for the board to rally around the embattled authority figure, giving short shrift to the grievant. To some extent this is a result of the authoritarian instincts of board members. But it is also the result of a very normal behavior pattern; board members have on-going relations with the superintendent and his administrators which cut deeply into their capacity to make detached judgments in contentious circumstances. It is for such reasons that in-house investigations are always suspect." [2]

Too often there is no mediation, just a void, between families and schools.

Second, there is the ombudsman, which began in Sweden and has been implemented at different governmental and non-governmental levels all over the world. An ombudsman is

> an independent and politically neutral officer of the legislature, usually provided for in the constitution, who receives and investigates complaints from the public against administrative action, and who has the power to criticize and publicize, but not to reverse, such action. [3]

The position is intended to provide a means for external fact-finding in response to complaints. In the school setting, such an official could report to the superintendent or to the board of education. He could serve as investigator and mediator for complaints from both consumers and professionals. He should have open lines of communication, as free of red tape as possible, and access to any information available to the administrator.

Third, there is the inspector -- distinguished by his ability to initiate investigations in the absence of complaints. While an ombudsman is often limited to responding to individual complaints,

an inspector can initiate action on his own, after being made aware of a situation through personal knowledge, a press report, or a visit ("inspection") to a school. He is thus relieved of his dependency on aggrieved parties to supply a moving oar. This is important when we are concerned with

> acts of omission...The injured consumer might never be aware of his injury or deprivation. If this is so, then it would be appropriate to consider other alternatives which would subject the professional administration to a more continuous and searching examination. This approach also offers the advantage that the more serene atmosphere of routing investigation will be more conducive to easier professional acceptance of change. On the other hand, there is no doubt that this approach is far more demanding of energy and talent than that of dispute resolution. And it is ultimately more threatening to the status of the administration. [4]

Finally, formal tribunals with fact-finding, case resolution, or rule-making authority are commonly a part of federal and state administrative and regulatory agencies. Hearing examiners are often used to make findings of fact and recommend conclusions of law. These actions are then reviewed by the regulatory agency and form the basis for its decision. For most school complaints such hearing procedures would be too cumbersome, but in some cases the opportunity for a formal hearing is a constitutional right which should be made available. [5]

We do not believe that any one of these models is sufficient to manage grievances in public schools. To be effective a combination of several models must be used: a complaint management agency should act as an ombudsman within the school system, a mediator between families and schools, and an inspector of school affairs reporting directly to the board. Such an agency might be called an Office of Adminstrative Fairness, or an Ombudsman, or an Administrative Critic. But the main question is not the name, but how such an office would function. There are several leading issues: (1) investigatory powers; (2) enforcement authority; (3) rank; (4) stance; (5) scope of jurisdiction; (6) hearing requirements; (7) external assistance to consumers; (8) and finally, recruitment and qualifications.

B. POWERS AND RESPONSIBILITIES

(1) Investigatory Powers. Free access to information is a precondition to effective action by the Critic.[6] If access to information is restricted, the Critic will be engaged in an interminable and self-defeating struggle for information. In such circumstances the Critic is relegated to either unproductive opposition to school authority or impotence resulting from ignorance. Because information is so important and so easily hidden, we have proposed a Critic who, like an ombudsman,[7] will be viewed as "neutral" and working within the system. Complete and free access to information - records, staff, students and parents - must not only be mandated but made effective within the limits of privacy and confidentiality.[8]

The qualities of the individual Critic, his relationship with school staff and families, and his energy, capability and educational philosophy are likely to be important determinants of the scope of his investigatory activity. The situation in a particular school system may determine whether an aggressive personality, or a low profile, will best secure information. We can only suggest that the Critic have explicit investigatory power. This means that the Critic should have authority to "subpoena" information and make investigations, even in the absence of a specific complaint. Although this may jeopardize the trust invested in a Critic by school staff, it will permit him to consider broader issues and accumulate individual complaints for investigation and resolution. Only with such independent and wide-ranging investigatory power will the Critic be able to examine acts of omission or other arguable wrongs of which potential complainants are largely unaware. Moreover, some complaints may not be brought simply because they are moot; a parent may learn of an injustice at a time when its correction will not help his child. But the Critic can examine such practices in order to assist other children in the future. This is particularly important because of the tendency to blame students for school problems. To the extent that school problems reflect a structural failure of schools, rather than an individual failure of "deviant"students, a critic who does not focus systemic complaints may do more harm than good by reinforcing the notion that it is the student, not the school who is maladjusted.

The Critic, then, should be equipped to suggest preventive action through his institutional memory and authority to conduct independent studies. Chronic problem spots may be uncovered by cross-referencing and tabulating complaints. Regular reports by the Critic to the Board analyzing the causes and possible cures underlying large volume complaints should be required. These reports should be distributed to families as well. Such a "study" should suggest methods of prevention for the future as well as better cures for the present.

The threat to the status quo implicit in such independent investigatory authority cannot be denied. But it can be overestimated, for the threat is also implicit in a less ambitious agency, limited to investigating individual complaints. Both scrutinize the actions of other school officials, and in both instances the Critic's task is to work within the system to help professionals serve the interest of their clients, the family.[9] Given these facts, the advantages of broad investigatory powers far outweigh any disadvantages which may arise from initial defensiveness.

(2) Enforcement Authority. An Administrative Critic is a voice, not a prosecutor; a persuader, not an enforcer; a mover, not a shaker; a mediator, not an arbitrator.

> Administrative critics, unlike courts, cannot overturn decisions. Unlike legislatures, they cannot issue new directions. They are commentators and counselors, not commanders; their eye rests upon public administration, but they are not themselves super-administrators to whom all others defer.[10]

Administrative critics are limited to the power of information, facts, existing alternatives, imagination, and persuasion. All they can do is "express an ex officio expert's opinion about almost anything that governors do and that the governed do not like...(taking) great pains to explain their conclusions, so that both the administrators and complaining citizens will understand the results reached."[11]

The main argument for enforcement authority is that it is necessary if an agency is to be effective; without such authority, the argument goes, no one will listen to or follow its recommendations. Yet enforcement authority would create a serious conflict-of-interest problem for a dispute resolution agency. Involvement in a prosecutorial fashion in day-to-day school operations would seriously impair the independence and "judicial neutrality" of the agency, and it might gravely complicate relations with teachers, administrators, and their professional associations. To the extent that the recommendations of an administrative critic are actively resisted by educational professionals, any formal enforcement authority likewise will be resisted in principle and controlled in practice. Such enforcement authority would only increase the chance that school officials would refuse to cooperate with the Critic. If adding enforcement powers appears to school professionals likely to have effect, they will exert strong pressures which, in the absence of counterpressures from organized consumer interests, will ensure that such powers in practice will be emasculated completely or closely circumscribed.

The power of an administrative agency, then, is limited primarily to its ability to persuade and expose, whether or not it has formal enforcement ability. Experience with ombudsmen suggests that where they are respected and occupy a prestigious role, they often are able to negotiate informal settlements and channel complainants to redress. Only when disputes are essentially political, is the ombudsman unable to achieve a resolution. In such situations a Critic can only investigate, study, and recommend directly to policy-makers.

(3) Rank. The absence of enforcement authority implies that an effective complaint management agency must have great informal authority and prestige. For local schools this implies that the Office of Administrative Critic must be chartered and directed at a high level, preferably from the school board itself.[12] If the Critic is responsible to the superintendent, there will be a serious limit to the agency's role. As chief administrator, after all, the superintendent may not want to overrule a subordinate in any but the most exceptional circumstances. Thus it is far better for a dispute resolution agency to have co-equal organizational rank with the superintendent himself. The Critic, like the superintendent, should be responsible directly to the board, and he should have the same salary and rank as the superintendent. While there may be political objection to this from some superintendents, they are probably the ones who would be most prone to doling out reprisals to an agency under their sponsorship by way of control over budgets and appointments.

Without co-equal rank with and independence from the Superintendent, the Critic will lack the authority necessary to work effectively with school staff, and the status needed to attract and retain qualified and talented people. And by responding directly to the board, the Critic acts in the traditional role of ombudsman:

he is a critic of the behavior of executive agencies but is himself answerable only to the "legislature."[13]

(4) Stance. Everything we have said suggests that while the purpose of a complaint management agency is to do things for consumers that schools have not done but should, it will not work if its stance is that of unequivocal consumer advocate. This means that the agency must not be perceived as the political property of any of the parties at interest. The Critic simply cannot act only as the advocate for the family against the schools; if he does, he will lose his credibility in making investigations and findings, his ability to work out settlements and resolve disputes, and his prestige in raising policy issues and suggesting alternatives. Something akin to impartiality is essential. This implies a loss of independence substantial enough to mean that external consumer assistance will often be necessary.

(5) Scope of Jurisdiction. Perhaps the best way to achieve the desired degree of neutrality in a Critic designed to assist consumers is to permit him to handle complaints from school staff as well as families. A presumption of neutrality and fairness should then attach to his office. Such a role for staff may also directly benefit families. Staff complaints may arise when schoolmen are thwarted by superiors or bureaucratic inertia in their efforts to further family interests. The Critic's role is precisely to circumvent such obstacles. Whether the complaint is initiated by teacher or family should not determine whether the Critic will act.

Moreover, if the Critic serves staff as well as family, he is less likely to be viewed as a threat by staff when he services a family complaint. Professional group and teacher union resistance to the Critic may also decrease if its members can call on his services.[14] Finally, expanding the jurisdiction of the Critic may provide him with a better perspective on the school system's operation.

There are arguments against permitting the critic to handle staff complaints. The Critic's time and energy would be partially divided, but handling teacher complaints is probably worth that price if it enables the Critic to gain good will among the school staff. The more dangerous prospect is that time spent resolving staff complaints will link the Critic too closely with the values and actions of the professional schoolmen and separate him from those of parents and students. This argument is a corollary of the cooptation so often found in the relationship between regulatory agencies and those they are charged with regulating. Staff complaints brought to school ombudsmen in Montgomery County, and Dallas, however, have involved contract matters like salary, vacation, leave, and promotion, rather than issues affecting consumer actions and values. This suggests that staff complaints may not raise the conflict. But to lessen the dangers of cooptation, critics must be chosen for their independence and personal integrity. By having the rank of superintendent, and reporting directly to the school board, the Critic can better maintain his stance of active neutrality, even if his jurisdiction extends expressly to staff complaints.[15]

(6) Hearings. Although the Critic's purpose is to resolve complaints, he will not always be able to do so informally through telephone calls, small conferences, persuasion, and the like. And in certain cases, fundamental notions of fairness embodied in the Constitution require that more formal hearing procedures be made available. Under what circumstances should the Critic call a formal hearing? When should a hearing be available to a party? What role should the Critic play at such a hearing?

An aggrieved party is usually more willing to go through the hearing process than his accused adversary, who sees any such action as a threat. This means that hearings can be a bargaining chip: the possibility of exposing an individual or a practice through the use of public hearings may be as potent as any plausible enforcement power. In cases involving sensitive personnel matters, however, non-public hearings might better serve everyone's interest. The problem with this is that teacher-student disputes will sometimes involve some arguably "sensitive" information. Perhaps closed hearings could be held unless both school and family agree to a public hearing. Concurrence of involved staff might be necessary to overcome professional resistance. If final findings are made public, the consumer's advantage in public hearings will not be lost, except for those cases that are "cause celebres" and "political" attacks. These controversial cases, however, are symbols of larger issues, rather than basic personal disputes. Thus, to say that a closed hearing will harm these limited consumer interests is merely to restate what we already know: a neutral dispute mechanism is inappropriate for settling basic policy disputes.

What should trigger a hearing? Should it be the demand of the complainant, the discretion of the Critic, or the type of issue? If it is the first, the agency may become inundated with hearing demands. This means that a Critic, who wishes to settle most disputes informally, may pressure each complainant to trust his good faith and power and waive his right to a hearing. This leads to the second approach, in which the Critic calls for a hearing at his own discretion. This is a necessary minimum: the school system must at least allow a hearing when its own grievance manager wants it. The problem is that a critic has a stake in avoiding hearings whenever he can, so that this approach may in effect nullify the hearing rights of complainants.

Thus, we think that when the complaint involves fundamental changes in the child's academic status (e.g., expulsion, placement in special education or juvenile rehabilitation programs) by reason of academic performance, mental capacity, or discipline, the affected child and his family must be given notice, and the opportunity for a hearing.[16] In these cases the family should be able to demand a hearing as well as to use the office of the administrative critic to resolve any dispute. The hearing could then be used by both critic and complainant. If more formal hearings are held on demand of either the complainant or the Critic, we do not believe that the Critic himself should serve as the hearing examiner. In many cases he will have already made an extensive investigation of the complaint and arrived at tentative conclusions about the facts and proper course of action. For the Critic, then, to hold the hearing would be merely to provide him with another forum, when what is needed is an independent judgment. Furthermore, a Critic who tries to be both negotiator and judge may be effective as neither. Since the school board is ultimately responsible for all decisions, it should appoint independent hearing examiners from outside the school system.[17] Local boards could establish a pool of such examiners from among lawyers, arbitrators, and others outside the school but in the community, and these individuals could hear evidence and make findings of fact and recommendations. At such hearings the Critic could be one source of evidence and "expert" opinion and he could provide an alternative set of recommendations to the Board.[18]

(7) External Assistance to Consumers. Teachers and administrators can call on legal and technical assistance through their unions and professional associations. Should parents and students have access to similar resources? As no similar consumer associations now exist, families must rely either on private resources or on some new program of consumer assistance. In many cases, especially those still before the Critic, there may be little need for such assistance. Yet there is little reason why the Critic's (or the Hearing Examiner's) tasks would be hindered if any party was represented by an advocate or otherwise invoked technical assistance. In addition, in more formal hearings such assistance may well be necessary: these proceedings are more adversary and a favorable resolution would

depend partly on the parties' capacity to gather evidence and present their cases. Where effective assistance for consumers is available, families should be encouraged to use it. In the absence of such assistance, families may have to rely on themselves and the Critic. Such representation by an involved "witness" may not be free of conflict. Although due process safeguards must be provided at the hearing -- notice, opportunity to present evidence and cross-examine witnesses, written findings and conclusions -- they may prove illusory unless each family can enlist the services of independent counsel and experts.

(8) Qualifications and Recruitment. Thus far, most of the discussion has focused on the institutional attributes of the Administrative Critic's role, and the formal definition of power. But experience with other efforts at consumer protection shows that the personal and professional attributes of the workers in such an office could be equally important. For example, success in encouraging and managing complaints could depend as much on the training and ambition of an ombudsman as on his formal authority. His powers as ombudsman, mediator and inspector can be authorized; but their proper use depends on the Critic's personal skills, knowledge, and career incentives.

It is not clear that the Critic should be a schoolman or a person from the local school system: "Education is not an area in which a wide gulf of technical expertise separates the layman from the professional. The ombudsman should be in a position to seek technical help as he needs it."[19] On the other hand, if the critic has his roots in the community rather than in the school system, he may be more an advocate than a neutral critic. One thing is clear -- anyone who is deeply tied to a school system or has ambitions within it will weaken the office and its effectiveness.

Some might argue for someone with roots in the community, who can identify with clients. In a survey of Michigan State University students, however, the overall student preference for ombudsman was for a non-teaching faculty member. Fewer than half wanted a professional student personnel worker, and no one suggested a student for the position.[20] It may be more important for the client to believe in the critic's ability to deal effectively with the powers-that-be than for him to identify with the critic personally. The most important personal traits for the Critic would be knowledge of the school operations, high prestige, impartiality and accessibility. Some legal background would be a definite asset, both in performing in his role and in knowing its limits. If the critic is not a lawyer, such competence might be provided in a training program.

How do we find such a person and institutionalize his impartiality? If he comes from within the school system, he might hope to return to it at a higher level (e.g., superintendent). If he views the position of Critic as a stepping-stone to that end, there is real danger of cooptation, since he would be reluctant to risk his career by confronting the system. This is exactly the problem that has weakened the federal regulatory commissions. Can we prevent this from occurring?

One possibility might be a rule preventing a critic from taking another job within the same school system. Or a teaching background might be combined with offsetting experience in community organizing. Taking someone from the outside, such as a lawyer, a professional arbitrator, or someone trained for the role might be more effective, since their career lines do not overlap that of the schools. While each system must hire its own critic and ensure that his neutrality and effectiveness are institutionally safe, we think the employment of non-school personnel could be important. It is also important that the critic be given co-equal rank, status and salary with the superintendent. These steps would do much to find and retain a critic who is talented, institutionally strong, and without incentive to "rise" in the school system.

C. SOME PRACTICAL CONSIDERATIONS

All of the preceding discussion has been rather abstract. It provides a foundation for understanding how an administrative critic's authority would be derived. It also may help to sketch briefly our view of how such an office would be created, and how it would work.

Establishing an office of this sort would, of course, be the business of a board of education. The motivation would arise not only from the desire to serve consumers by effectively managing their complaints, but also from the desire to serve them better by providing the board with a staff independent of professional line administrators. The resolution establishing an office of ombudsman or administrative critic would reflect these motives, and there is little doubt that the debate surrounding it would be difficult. A board which was unprepared to free itself from dependence on the professional staff would be unlikely to pass such a resolution, or to strongly support the new staff it it passed one.

Once established, the central staff of such an office should be located in the central headquarters building, in close proximity to the offices of the board members. But while this would be where the Ombudsman or Administrative Critic would work, most of his staff would work in schools and neighborhoods. In a small district, of course, having quarters in a central office would not be incompatible with the staff spending most of its time in schools and neighborhoods. But in medium-sized and large school districts, local offices would have to be established so that the agency's work could be carried on effectively. All the experience with this sort of activity suggests quite strongly that it works only if the staff abandons desks and chairs for a good deal of the time, and works directly among students and parents. This is necessary in order not only to discover problems, but also to develop community awareness of the agency's existence.

Staffing requirements would vary from one place to another, but there are several things most communities would probably have in common. First, the school and neighborhood workers should be selected and trained in such a way as to maximize the chance: (1) that they would understand the particular problems of families in their service area; and (2) that the families would identify with them easily. Second, the staff size should be relatively modest. Although it is hard to predict caseloads (they would vary with time and circumstance), an agency of this sort could not be effective if it became a bureaucratic giant. Perhaps a ratio of one professional staff person to every three or four schools would be a good rough rule of thumb. Third, the staff would have to embody a range of talents -- from investigative work, to mediation, to policy analysis. This would probably require a good deal of pre-service training, some circulation of the staff among jobs, and a staff drawn from a variety of backgrounds: teachers or guidance counselors, neighborhood workers, recent law or business school graduates, and lawyers or arbitrators.

How would this staff spend its time?

Again, the answer would vary with time and place, but some general trends seem likely. First, most staff would spend most of their time in particular schools and neighborhoods, answering individual complaints, investigating their factual basis, and trying to help complainants resolve them. Some of this time would be spent on complaints which were spurious or mistaken; some on small matters quickly resolved; some on matters of consequence which could be resolved by informal means at the local level; and some of the time would be spent keeping records of what happened.

But some cases -- we imagine a modest amount -- would be non-trivial matters that could not be resolved at the individual school level. These would require consultation at higher levels, between the

Administrative Critic and the line administration. And while informal negotiations higher up would doubtless resolve some of these matters, others would require full field investigations and reports, preparatory to some sort of hearing. These investigations would heavily involve the central office staff of the Administrative Critic's office, as would the hearings.

That central staff, of course, would have other things to do. It would spend a good deal of its time involved in independent investigations and analyses, prompted either by board of education requests, by its own intuitions, or by the results of studies arising from its past work. And it might serve an independent oversight function at the request of the board of education.

One can imagine several possible futures for such an agency. One alternative is that a board of education would establish an Administrative Critic's office without the required independence. That is, the original resolution might assign it equivocal investigatory powers, or build in responsibility to the superintendent, or allow only low-order staff, or in some other way impair its authority and capacity. In this case the agency would be at best partly effective, and after a few years would either vanish or become in effect part of the line administration.

Another possibility which seems equally likely, is that an agency would be established, but at several crucial early junctures its recommendations to the board of education would not be supported. In this case, the promise inherent in the original grant of authority would fail to materialize when the board had to choose between the professional staff and the Critic. Since boards are enormously dependent on professional school staff, this result would be no surprise.

But it also is possible that an agency with the proper initial grant of authority could survive enough serious situations to maintain its prestige and credibility. This would not be easy, because within the system there would be resistance and hostility, while outside it students and parents would be unused to the notion that something could be done about their problems. Building credibility and effectiveness would, even in the best of circumstances, take several years.

Under this last contingency, the agency's business is likely to change in several ways. First, complaints would flow only modestly at the outset, but would increase as the agency's reputation grew. Second, school system procedure and policy in several areas would change. Most important would be student classification decisions, student rights, and complaint management itself. Third, students and parents would learn to utilize these new procedures, which would reduce the caseload of individual grievances carried by the administrative critic. And finally, it is not unlikely that if the agency was effective, the school board would turn to it increasingly as a source of independent advice and analysis on more routine policy matters such as budget, appointments, and so on.

Over time, then, the balance of work of a successful agency would shift from individual complaints to independently initiated investigations, analysis, and routine advice to the board. And it is implicit that the success of such an agency would also lead -- after what might be an initial increase in manifest discontent as the agency's business began to peak -- to increased confidence in the schools.

This view of the agency's future is, of course, optimistic. Other problems might arise, apart from the gross failures outlined in the first two options. It is possible, for example, that timidity or blandness on the part of school officials could increase due to the presence of an administrative critic. "Awareness that someone is constantly looking over their shoulders causes some public officials to become too timid instead of too bold."[21] This could cause officials to keep copious sets of detailed records, thereby increasing rather than decreasing the amount of red tape. Also, complacency could increase among parents and students if they assume the critic is safeguarding their interests without needing their own involvement. Or the agency might simply evolve into an educational sub-specialty, with career lines running from administrative criticism to school administration and back. While this might improve educational administration, it would decrease the independence and effectiveness of an Administrative Critic.

Our proposal for an experiment, then, can be summarized briefly. OEO should attempt to identify several sites where a five or six year experiment could be attempted.

> --The Office of Administrative Critic would be created by the board of education. The director would be appointed by the board after consulting with representatives of students, parents, teachers, and administrators, and his salary and rank should be on a par with the superintendent. The primary qualifications of the appointee should be an understanding of the school system's operations, sensitivity to students and parents, particularly those belonging to poor or minority groups, and a career line independent of the schools.

> --The critic should have authority to choose his own staff, without civil service restraints on hiring and delegating responsibility. He should be responsible directly to the board of education, and should have access to all school records and all school personnel in carrying out his investigations. He should have the right to require the personal appearance of school personnel at private hearings, the right to require the production of any records he deems relevant to his investigation (with adequate procedures to maintain confidentiality), and the power to recommend disciplinary action against any school personnel who do not comply with his requests. When other efforts fail, the Critic should have the authority to call public fact-finding hearings. He should also have the authority to investigate on his own initiative any practices and procedures within the system.
>
> --The Critic should make formal reports to the board. at least semi-annually, containing statistical breakdowns of complaints by type, with any in-depth studies and recommendations he deems fit.

D. CONCLUSION

This brief discussion of how an Administrative Critic might be set up, and how it might turn out, suggests what we would want to learn from an experiment. First, we would want to get some sense of the degree to which school officials are open to the idea, from the field-work preceding any operational grant, and whether there are any regularities in their response. Second, and most important, from the experiment itself we would want to learn about its effects, on how schools and consumers behave. We would be most interested in the sort of complaints brought, the sort of people who bring them, and the frequency with which they are brought to the attention of authorities. We also would want to know whether the nature or frequency of complaints changed over time. The school system behavior in which we would be most interested is the institutional response to the installation of an Administrative Critic: would new and fairer procedures arise, or would the schools become more timid, defensive, and ingrown? Learning these things would probably require four or five years.

Third, we would want to know how an Administrative Critic affected the way consumers and school officials thought about each other, and themselves. The most crucial point here, of course, is whether the presence of such an agency changes parents' and students' satisfaction with the schools. Attitudes of this sort are not easy to measure, but since they have a good deal to do with how people behave, the effort would be important. It would require a good deal of interviewing in schools and communities, before and during the experiment.

The answers to these questions would give us some sense of how "successful" and Administrative Critic's office was; if the experiment were undertaken in several communities, we could also learn something about the situational factors which affect its operation. Even these few paragraphs suggest the complexity of any evaluation, and the considerable commitment of time and money that would be required. (The evaluation is discussed in much greater detail in Chapter IV.)

The experiment we propose, then, offers the opportunity to determine whether public service institutions can begin to recognize and protect the interests of their consumers. The Critic would not protect every interest, nor would he solve every problem families face with schools. But by marshalling the powers of the ombudsman, mediator, and inspector in a single office, the Critic may be able to manage *and* encourage the complaints of clients. Given institutional support appropriate for the task, the Critic may stand a good chance of making schools more responsive to the interests of the family. This would be a significant advance over the prevailing pattern of non-encouragement, nonassertion, and non-resolution of consumer complaints.

Footnotes to Chapter II

1 This discussion omits a few "detours" in the ladder system -- e.g., buckpassing, unwritten rules, etc.

2 Carrington, P., *Administrative Regulation* (a special paper prepared for the Center For The Study of Public Policy), July, 1971, p.4. Included in Appendix C.

3 Rowat, D., "The Spread of The Ombudsman Idea," in Anderson, S. (ed.), *Ombudsman for American Government*, (American Assembly, 1968), p.36.

4 Carrington, *op. cit.*, p.7.

5 See Appendix B to this report for a fuller discussion of this issue.

6 This discussion refers to our particular proposal for an administrative critic, but most of it applies generally to grievance management in schools.

7 Gellhorn, W., *When Americans Complain*, Harvard University Press, Cambridge 1966, argues that: "All (ombudsmen) have practically unlimited access to official papers bearing upon matters under investigation, so that they can themselves review what prompted administrative judgment." (pp.9-10). Inspectors and hearing examiners generally have explicit powers of search and subpoena.

8 The few existing ombudsmen in schools -- in Rockford (Illinois), Montgomery County (Maryland), and Ann Arbor (Michigan) -- have access to all non-confidential files and information. *With the permission of the person whose file is confidential*, they also have access to all confidential information.

9 We should note that the Montgomery County Ombudsman was originally authorized to have full power to initiate investigations of his discretion. After pressure from teachers and administrators, however, the Board of Education modified his authority and allowed him to make "full-scale" investigations only with concurrence of the Board.

10 Gellhorn, *op. cit.*, p.6.

11 Gellhorn, *op. cit.*, p.10.

12 There is the question of whether the complaint management agency should be located at the State instead of school district level.

The argument for such arrangement is premised on the assumption that location in the local school district means cooptation and accomodation, while location at the state level means independence. But, as we have noted, the Critic's role involves inside cooperation, knowledge, inspection, and persuasion, not outside intervention. Such a role suggests that the Critic be accountable to the local decision-making authority. Moreover, state education agencies are notorious for their accomodation to the interests of local schoolmen. The best hope for the critic rests with institutional support from the local school system, and its commitment to create an office to encourage and manage complaints.

13 In theory this is the situation of the ombudsmen in Montgomery County and Ann Arbor, but these positions in fact lack the salary, rank, status, and prestige of the school superintendent. As a result they lack the potential to act effectively as critic. In Rockford the "ombudsman" for a single school did report directly to the superintendent.

14 Unions, of course, may wish instead to use the grievance mechanisms hammered out by collective bargaining agreements. It may be instructive, however, to note the experience of Montgomery County: its school ombudsman was initially created to assist only staff. Only later was his jurisdiction expanded to include complaints from students and parents.

15 The Critic's jurisdiction may also extend to some family complaints against agencies outside the schools. For example, if a child is unable to learn in school because of a delay in delivering food stamps, or harassment by police, the family should be able to enlist the Critic's services.

16 See Appendix D for a more specific discussion of which issues require hearings and what those hearings may look like.

17 As noted, board members traditionally are more responsive to professional groups with whom they must maintain a continuing relationship than to individual complainants or even ad-hoc issue-oriented groups:

> If a local board wants to avoid its own disability in this regard, it would be useful to attend to the lessons of general administrative practice, which suggest that the virtue of severing the fact finding task from the others so that it can be performed by those who have no on-going relationship with any of the parties to a dispute. Carrington, op. cit., p.4.

18 It might be argued that an external review board should be established to hear appeals from the final "local" decisions of the board. Such an external review board could be created

under the authority of the state board of education and be implemented with a group of state hearing examiners. Such an appeals apparatus is not now required by the Constitution or state law. Thus only local boards which are sufficiently worried about consumer protection to want to test their own decisions and those of their staff would promote or comply with such an arrangement. For these sympathetic boards it seems far more advantageous to the consumer to improve their internal complaint management mechanisms than to invest in a cumbersome external appeal procedure.

19 Cronin, Joseph M., et al. Organizing an Urban School System for Diversity. Boston, 1970, p.107.

20 Rowland, H.R. "The Campus Ombudsman: An Emerging Role." Educational Record 50: 442-48, Fall 1969.

21. Gellhorn, *op. cit.*, p.52.

CHAPTER III: THE EDUCATION ATTORNEY

The preceding chapters make it plain that under the best of circumstances parents and students often need independent assistance in dealing with schools. Even the administrative critic implies the need for external consumer assistance; perhaps more important, it is least likely to be adopted where families are most in need of help.

Our premise, then, is straightforward: families need assistance in voicing complaints, organizing, gaining information, understanding it, and -- when all else fails -- litigating. Many school grievances and problems are essentially reflections of a relationship where schools are adversaries of students and parents. Schools and school professionals have representation, organizations, educational expertise, and legal counsel. To effectively assert their own interests, families require similar resources.

This chapter outlines a proposal to provide some of the missing resources -- via legal and para-legal assistance provided in an office of an Education Attorney. In broad outline, what we propose is an agency within the Neighborhood Legal Services Program in which an Education Attorney supervises a legal, educational, and para-legal staff, which would provide independent assistance to consumers of public education. The office would deal with the entire range of school problems, but its emphasis would be on assisting consumers when they find themselves in an adversary relationship with schools. Its purpose in providing badly needed help to poor families would be to move schools toward fairer procedures in dealing with students and their parents.

The proposal rests on several critical assumptions: one is that while consumers need advocacy assistance, this is unlikely to be provided directly through government sponsorship of student and parent organizing; another is that assistance to parents and students must have a durable institutional and professional foundation, and at present lay advocacy seems insufficiently developed to qualify; a third is that the legal profession does provide such a professional and institutional basis for assisting consumers in adversary relations with government, and has begun to offer some of the assistance we propose through the Neighborhood Legal Services Program.[1]

In fact, it would not be unfair to regard this proposal as a way of building on, expanding, and formalizing several developments which have emerged in and around the NLS Program. One is the growing focus on the problems of children, schools, and related child care institutions;[2] another involves recent efforts to expand the use of non- or para-legal staff; a third is increased emphasis on the use of legal staff as advocates for the poor outside courtrooms; a fourth is support for new institutional approaches to consumer assistance in education;[3] a fourth is the very existence and almost certain future of NLS as a viable institution.

Our proposal for an Education Attorney's Office is an effort to synthesize these developments and give them concrete institutional form. If such an agency succeeds it would provide badly needed assistance to parents and students, it would help make schools more accountable to their clients, and it would confirm the idea that new approaches to relations between citizens and government are viable.

But it is by no means clear that an Education Attorney's Office would work. The first step toward answering that question is describing how it would operate. There are several important matters here: one is how the activities of such an office would relate to the courts; another involves the character of the office and its staff, and a third involves its program and timing. We take these up below.

A. RELATION TO COURTS

Although we are proposing an agency rooted in the legal profession, we are not proposing that all disputes in public education should be channeled into the courts. It is generally true of disputes in this country that few of those which reach a lawyer ever reach a judge. To understand what follows it is essential to remember that very few disputes should ever reach a courtroom. Resort to the system of legal redress does not imply immediate resort to a judicial forum. Indeed, resort to the court should occur only after all other avenues have been tried without success. Experience elsewhere suggests that the vast majority of disputes are resolved outside courtrooms. Judicial involvement constitutes only the most visible aspect of the system of legal redress.

There are several reasons for our view on this point. One is that in the mainstream of American life, clients enlist the aid of private attorneys for a wide variety of non-judicial matters. Attorneys assist in resolving disputes informally, negotiating agreements out of court, lobbying for their client's interests in the halls of government, organizing public and private corporations, and securing and interpreting information. If this is the pattern of legal services available generally, it is not unreasonable to suppose that things would work similarly for the poor, or in the relations between schools and their clients.

Another reason for keeping most school disputes out of court is that most of the problems that arise are not easily amenable to judicial resolution. For one thing, many simply do not rise to the level of a court hearing; it is hard to imagine how the judicial system could cope with a parent's concern over the lack of homework. For another, many of the disputes which are of sufficient public consequence to merit judicial scrutiny are not easily solvable by a court. For example, the improper assignment of a child to a particular ability group can have an enormous effect on the child and is a problem of considerable proportions in the schools. But resolving such a tracking dispute requires that the courts have a reasonable criterion of ability group assignment.

Other considerations which lead us to be chary of bringing disputes into court are the time-consuming nature of such proceedings, the expense involved in litigation, the rigidity of court procedures, and the formality that court actions would impose on relations between schools and citizens.[4] This implies a priority on informal approaches to gathering information and resolving disputes and the need to press schools to institute procedures which are fair but not mechanical. (See Appendix D for a discussion of judicial involvement in school affairs.)

Having said all this, it is important to recognize that resort to formal litigation would be an important resource for an Education Attorney's Office. When all else fails, litigation is potentially a very effective way of gaining information, exposing problems, framing remedies, and developing political and legal pressure for action. And there can be no question that some of the issues which arise between schools and their clients should be litigated. It is for precisely these reasons that an Education Attorney's Office would command much more respect from a school system than any similar organization based on lay advocacy.[5]

What is required, then, is a program which utilizes litigation where appropriate, but which subordinates court action to other activities designed to advance the interests of parents and students. Whether this is possible depends primarily on whether the interests of students and parents can be advanced effectively on an adversary basis without litigation.

B. PROGRAM

That, of course, is the central programmatic issue. Our investigations make it plain that there is no shortage of problems -- student rights and student classification issues alone would provide several years' work, even in a relatively benign school system. The experience of the Dayton Center for Student Rights and Responsibilities -- where neighborhood workers with relatively little training have gone into poor communities to identify and investigate school problems -- suggests that parents and students do not require extraordinary encouragement to come forward with their problems.[6]

The question, however, is whether it is reasonable to expect satisfactory resolution of problems outside the courts. And while that issue cannot be resolved in any final sense without an experiment, it is reasonable to want some preliminary indication that an experiment had a decent chance of success.

The requisite evidence seems to be available from the Legal Services Program and related activities. Efforts during the last two years to improve the administration of several state and federal education programs, for example, have met with a good deal of success. In several instances state and federal regulations governing Title I of ESEA have been changed, but problems have arisen when sufficient staff has not been available to follow up on enforcement. Neighborhood Legal Services offices report that a considerable proportion of their "walk-in" education business involves student rights cases, and many of these have been settled by conferences between NLS attorneys and teachers or principals.[7]

But one of the best arguments for non-litigation work is the results of successful litigation itself. In 1968, for example, the Supreme Court upheld the rights of several students to wear armbands in silent protest against the Vietnam War (the Tinker case). This reaffirmed that students' civil liberties do not end at the schoolhouse door. But Tinker has not been applied in many school districts simply because students lack assistance in bringing the import of the decision home to school officials. And a similar problem can be anticipated if, as seems likely, favorable court decisions are forthcoming on school exclusion and student classification cases. Without agencies pressing for compliance -- a task involving research, investigation, public education, and negotiation -- these decisions will be honored more in the breach than the observance.

Perhaps the best evidence of a fertile field of activity for an Education Attorney's Office outside the courts is provided by the experience of the Dayton Center for Student Citizenship Rights and Responsibilities.[8] This is an OEO funded lay advocacy agency whose primary function is to provide individual redress for problems which poor families have with schools. Most of the staff are lay advocates, and their job is to work out the best possible solution to their clients' problems with the school system. For example, a number of the cases in Dayton have involved suspensions. The school system was issuing indefinite suspensions, a punishment illegal under state statutes. The magnitude of the suspension problem, and the procedure for seeking redress, is illustrated by the Center's description of the following case:

> Black students being bussed into an upper middle class white school are being subjected to abnormal suspension procedures. We have had seven separate cases from the same school. In one, a student accused of throwing a snowball at the bus driver was made to walk 4.9 miles home and suspended for ten days, without even a chance to explain his side of the story. His parents were not notified. In another, an eighth grade black student was suspended for allegedly starting a fight between black and white primary children. His side of the story was not heard. An entire busload of black students (28 children) was suspended immediately when the bus driver complained that they were unruly. The Center informed the parents that the Dayton suspension policy explicitly states that suspension is to be used as a final measure after extensive efforts at counseling have failed, and the parent has been apprised of the growing seriousness of the situation. The Center helped the parents draft petitions, hold meetings with the principal and the Director of Pupil Personnel, put all of their grievances into writing, and not to give up

> until the children were back in school and the unfair suspensions were removed from the children's record cards. We were most successful in getting the children back into school quickly and, in two cases, having the principal apologize for errors.

Approximately half of the Center's case load since its opening late in 1971 has involved suspensions and expulsions. Each of the Center's ombudsmen (a misnomer since they are advocates) is assigned to a school, and as a result can sometimes intervene to prevent a suspension, or correct the precipitating factors.

But by far the most important effect of the Dayton Center's activity concerning suspensions has nothing to do with the problems of individual students. As a result of the Center's actions, and its efforts to reveal the systemic character of the problem, the school administration is now drafting, for approval by the board of education, a policy statement on due process in relation to suspension and expulsion. If this policy is adopted, an area of serious unfairness to students will be eliminated. Clearly this would be a most important result from the efforts of an Education Attorney's Office.[9]

Even if this discussion provides reasonable evidence that an Education Attorney's Office has a decent chance of success, it does tell us what the program for such an office would be. While it is impossible to detail in advance precisely how such an office would operate, or what the exact balance of its activities would be, it is possible to identify those activities and suggest their relative importance over the term of an experiment.

An Education Attorney's Office would be concerned with several main areas of work:

- -- Obtaining and disseminating information;
- -- Servicing individual grievances;
- -- Training parents;
- -- Developing model procedures, or other remedies for systemic problems;
- -- Litigating.

The informational work would probably fall into several categories: finding out something a parent wanted to know; writing a report or undertaking a study designed to expose a bad practice or call attention to a good one; disseminating information about how the schools work, what students' rights are, what hearing procedures are used. It is hard to imagine any circumstances under which informational work would not be a major activity, but it is impossible to foresee what the balance of work among these three areas should be.

Servicing individual grievances would also be a major enterprise. Initially, at least, a fair amount of exploratory work with parents and students might be required to identify problems and establish the office's credibility and responsiveness. As the education attorney became known, complaints from families would likely increase. Families would seek assistance with those schools problems which are basically adversary. Complaints might well continue to increase until the schools adopted fair and efficient mechanisms for recognizing and managing grievances internally. And even after schools adopted such procedures, the education attorney would still be involved in representing families in school hearings on issues like changes in educational status which are fundamental, or in even more intractable policy disputes between families and schools. In recalcitrant school districts, where schools are least likely to adopt their own complaint management mechanisms, the assistance of an education attorney may be even more important for protecting individual families' interests. For where schools refuse to process complaints an education attorney would be called upon to represent families in a variety of disputes. In such instances, the education attorney's office would attempt by force of individual representation to accomplish what schools should do on their own -- recognize, encourage, and respond to the complaints of families.[10]

It is more difficult to make any useful assessment of the time required for the remaining three areas of activity: litigation, training parents, and developing remedies. It is easy to imagine a situation in which a good deal of effort would be spent on litigation, and just as easy to imagine others in which little or no time would be spent in court. Training parents seems important, but we suspect that it would become a priority only for a relatively successful agency -- one which was not spending most of its resources in combat with the schools. And the need to develop remedies is so much a function of the extent to which school officials were forthcoming and capable that it is hard to do more than identify it as an area of potential concern.

This discussion, then, suggests several things. First, existing experience gives us reason to believe an education attorney's office might succeed. Second, the activity of such an office would almost certainly involve representing individual parents and students, and informational efforts, as the heaviest areas of work. Third, the main programmatic objective of such an office would be the development of the schools' capacity to manage complaints more effectively and to provide fairer procedures. Our discussion also reveals the importance of leaving the Office of Education Attorney relatively free to decide priorities among these and other areas.

C. CHARACTER OF OFFICE AND STAFF

The discussion of program also suggests a few important points about the character of an Education Attorney's Office and the nature of its staff.

The first point is that a considerable proportion of its staff need not be lawyers. The experience of the Dayton Center and other similar agencies shows that neighborhood workers, ex-teachers, education and law students, and parents can serve perfectly well as family advocates. But this would be workable only if (and this is the second point) reasonable training and supervision is provided. Much of the training, of course, would necessarily be provided on the hoof, since there is a great deal that could neither be anticipated nor assimilated in advance. But there are a few obvious matters: an initial familiarity with the school system's operation (which could be an on-the-job training device); rudiments of legal procedure; an introduction to investigative procedures, gathering evidence, and writing field reports; an overview of the sorts of grievances which could be expected, and a discussion of ways in which they could be handled.

However exhaustive the initial training, it would be important to provide opportunities for learning on the job. Some of this could be done in classroom-type situations (simulating a formal hearing, for example, or learning about adolescence), but a good deal could be accomplished only by setting aside the time required for focused discussions of work in progress among the staff. Since this is difficult in any ongoing operation -- especially a busy one -- it might be useful to assign training responsibility to one of the supervisory staff. If continuing training were everyone's responsibility it would be no-one's.

A second point is that it would be a mistake to split the staff between central office attorneys and family advocates at the school or neighborhood level. Other abilities also would probably be required to operate the sort of office previously sketched-out. Some research skills, for example, would be needed to produce studies or reports, and it would be important to have staff with expertise in education. While we cannot detail the way in which these skills should be divided up within an office, it seems reasonable to suppose that rough half the staff should consist of family advocates, none of whom would be lawyers. It also seems reasonable that the supervisory staff of the office should include an attorney and someone with expertise in either education or community work. And we might expect that roughly as much resources could be allocated to training, publishing reports, litigating, hiring expert opinion, lobbying, and organizing as would be devoted to direct representation of individual families. Within these broad guidelines, however, an Education Attorney should be free to allocate resources as the situation seems to indicate.

Finally, it seems essential that the Education Attorney's Office be located in a local Neighborhood Legal Services Office. There would be little point in relating an Education Attorney's Office to NLS unless there were some opportunity for interaction. While the Office should have an independent budget, it should be under the general direction of the NLS Office director.

In summary, then, we are proposing a substantial diversification of staff and work within a NLS office, so that lawyers, educators, and neighborhood workers can concentrate more attention on education. The Education Attorney should have the salary, rank, and experience of a deputy LSO director, but he should work only on education issues. He should have no responsibility for supervising non-education NLS staff, but the authority to train a corps of lay advocates, to supervise them as they represent families, and to hire consultants, experts, or teachers to publicize the office, organize, and assist on matters of educational policy and practice. The Education Attorney would require the resources sufficient to purchase the skills needed to carry out these functions, and the considerable discretion needed to use the resources to suit the particular concerns of families and the nature of school systems in various localities.

The sequence in which these skills would be used might vary from place to place. One office might decide to concentrate initially on dramatizing its identity and availability through test cases. Then, with families increasingly aware of the services, it might begin to train advocates to represent them. Thereafter, it might turn to efforts at the local and state level to secure systemic procedural change. Another office might begin by allocating most of its resources to individual family advocacy, and another might begin by publishing studies of school policy and practice.

Although we do not have a rigid conception of timing, two general points about the program seem clear. One is that any such office will have to place a good deal of emphasis on representing individual families in their relations with schools. The other is that the purpose of this representation is not simply to provide assistance to families, but to use problems to seek broad revision in schools' practices and procedures.

The last point worth considering in connection with the character of an Education Attorney's Office is its size. Although many Legal Service Offices are quite large, we are inclined to place close limits on the size of the agency we propose. For one thing, merely existing as a division of an LSO places some limit on size, and for another, the novel character of the enterprise argues for trying it on a manageable scale. We think this means a staff which consists of no more than two or three senior staff, ten or twelve family advocates, and five or six other staff members with education or research expertise.

D. CONCLUSION

Finally, there is the question of what might be learned from the experiment described here. For the most part, the answer to this query is the same as it was in the case of the Administrative Critic. We would want to know how an Education Attorney's Office affects the behavior and attitudes of schools and consumers. In the case of consumers, we would want to know whether their satisfaction with schools changed and -- more importantly -- whether their problems were more frequently resolved. And in the case of schools, the main criterion of success would be the extent to which procedures were adopted which increased the fairness with which parents and students were treated.

But in addition, it would be important to learn something about the viability of such an office within Neighborhood Legal Services, and about its impact on NLS itself. One issue is whether the mix of services and staff proposed here actually works effectively in the same organization; a second is whether an Education Attorney's Office would work productively within local Legal Service Offices; the third is whether the new conception of staff and services would spread within NLS.

Our expectation, of course, is that an Education Attorney's Office would prove immensely useful -- as a way of assisting families, as an approach to making schools more humane places, and as an innovation within Neighborhood Legal Services. Naturally, the success of the proposal depends in large part on the skill and perseverance of the particular people involved. But giving broad power and resources to a varied staff under an Education Attorney within local NLS offices seems a viable way to protect the family's interest in public schooling by offering advocacy assistance to large numbers of parents and students. It would help to right the inequality between families and schools. It would help families recognize and define their interests; it would help them persuade schools to recognize these interests; and, where necessary, it would help families defend these interests in adversary procedings with schools. In sum, we believe that the Education Attorney has a good chance of changing the character of the schools' relations with parents and their treatment of children. Our doubts about the proposal are directed mainly to its ultimate impact on NLS, and to whether the schools would respond by adopting new and fairer procedures. These are among the principle issues which should be explored in an experiment.

Footnotes to Chapter III

[1] For a full discussion of the limits and potential of litigation, see Appendix D to this report.

[2] Neighborhood Legal Services, in the last several years, has established a national back-up center in education (the Harvard Center for Law and Education), another national back-up center for non-school youth (the Juvenile Law Center at St. Louis University), and the education and juvenile caseload in Legal Service Offices seems to have increased.

[3] Roughly eighteen months ago NLS funded the Center for Student Citizenship, Rights, and Responsibilities in Dayton, Ohio. This Center is a pilot effort to test the effectiveness of lay advocacy in improving the position of parents and students vis-a-vis schools.

[4] Discussion of these problems is presented in Appendix D of this report.

[5] As we pointed out in Chapter I, this is due in part to the rather considerable threat posed by litigation. But it is also due to the fact that the legal profession is the only legitimate agency for promoting and managing extra-political conflict between citizens and government. The standing of the profession itself is something to be reckoned with, a fact which has contributed in no small measure to the endurance of the NLS program.

[6] The experience of the Dayton center also suggests it is important, at least initially, to establish an organizational presence by seeking out complaints and pressing them effectively. A passive approach seems unlikely to succeed. But the agency's experience also suggests the need for more than individual complaint processing. Many individual complaints are only symptomatic of broader underlying problems, and an agency which is staffed and organized to deal with these is likely to be a good deal more effective.

[7] The Neighborhood Legal Services Program has, of course, been investigating areas like housing, divorce, consumer purchasing, and welfare where the program provides significant continuing service to vast numbers of poor people. In the area of public schooling NLS does not yet provide comparable service. In part this is because education disputes often

involve issues of desegregation, resource allocation, and classification which are complex and time-consuming. Yet even in the more straightforward areas of civil liberties and statutory claims, NLS has represented only a few of the families that have potential claims. The relative inactivity of NLS in the field of public education therefore cannot be attributed only to lack of technical competence. Indeed, the national back-up center for education, the Harvard Law and Education Center, as well as several local and state Legal Services programs, have prosecuted complex desegregation, resource allocation, and classification suits, and resolved numbers of less complex civil liberties cases. The problem for busy NLS offices seems to be more that education issues are too complex and time consuming (desegregation and resource allocation), too numerous (civil liberties), or both (classification). Without technical assistance the complex issues are difficult to raise; without a cadre of para-professionals the too-numerous complaints cannot be processed at a reasonable cost. In short, NLS has failed to focus on education issues and offer the breadth of non-litigation services necessary to help families challenge the school decisions which every day shape the future of their children. The proposal for an Education Attorney attempts to set right these shortcomings in NLS service: it focuses attention on education issues, provides the variety of services necessary to comprehend and represent families' interests in public schooling, and provides the flexibility and resources to handle both complex and numerous school disputes at a reasonable cost.

[8] This discussion of the Dayton Center is based on our visit there, our conversations with the staff, and the Center's own published materials. Thanks are due to its Director, Arthur Thomas, for the time he and his staff spent during our visit and several ensuing phone conversations.

[9] Although the Dayton Center seems promising and worth replicating, our reservation about it arises precisely and principally from the barriers to its replication. Because it is not integrated with the NLS Program and linked directly with the legal profession, the Center may suffer the fate of other citizen advocate agencies -- failure for want of adequate institutional support.

[10] Whether an Education Attorney will be able effectively to "manage" family complaints in such recalcitrant school systems is a question which requires experimentation and evaluation. See Chapter III.

CHAPTER IV: THE TERMS OF AN EXPERIMENT

Having described our two preferred approaches to protecting the educational interests of parents and students, the next question is how we might find out whether they would work. Under what conditions would they have to be tried in order to learn about their effects?

In order to specify the conditions for these experiments, however, we must first identify what we mean by "working", and how we think it ought to be assessed. Once we have a clear idea on these points, it will be possible to decide how, where, and for whom experiments should be undertaken, how much they would cost, and how long they would take.

A. GENERAL DESIGN ISSUES

Several general issues must be faced before moving on to more technical questions of measures, design, costs, and so on. One is whether an experiment or a demonstration is more appropriate. Another is whether the two proposals should be evaluated within one comparable framework or two different ones. A third is what measures of effect should be used. A fourth is the matter of comparison or control groups, and the last is what population the proposed experiments should include.

Demonstration or experiment: There are three possible arguments for a demonstration. One is that anything else is too costly. A second is that nothing more can be learned from an experiment than a demonstration. A third is that the purpose of the exercise is not to learn but to teach. The third is certainly not our intent with respect to the two proposals here, and the first is not a judgment anyone but OEO can make.

The only question we can usefully discuss, then, is whether more can be learned from an experiment than from a demonstration. In our view the answer is unequivocally affirmative. Whatever could be learned from a single demonstration of each proposal, it would be a great deal less than what could be gained from an experiment with multiple sites. The precise nature of the gain will become more clear as this chapter progresses, but the main point is simple. In a demonstration it is either very hard or actually impossible to employ any of the devices which allow researchers to establish some confidence about the results of the intervention. Random assignment is clearly out of the question, since the whole purpose of assignment in a demonstration is to find the best site and execute the best possible effort. Control or comparison groups also are relatively useless. They are theoretically impossible (what site is comparable to the best possible one?), but even if possible in theory, with one site per experiment the confidence in results would not be greatly increased by having one comparison or control site.

We would not argue, however, that nothing could be learned from a demonstration. Our point is only that most of the learning would be similar to what one can gain from studying a large, complex, and absolutely unique historical event. It can be immensely interesting and informative, but it is devilishly hard to generalize from. Since OEO's interest in trying out the proposals would arise from curiosity about whether they should be tried on a large-scale, the need to generalize is considerable.

But social experimentation is extremely difficult, and almost never can be made to conform exactly to the canons of classical experimental design. As we will explain shortly, random assignment of Administrative Critics to school systems would be an utter fantasy (school systems would have to volunteer). and while the problems would be much less with Neighborhood Legal Services, they would still be considerable. On the other hand, matters are not impossible by any means -- a variety of assignment devices would still be possible, and there are several strategies for selecting control or comparison groups which could provide a fair degree of confidence in the experiments' results.

We will return to this matter further on in the chapter, when we specify the terms of control and comparison groups we think desirable.

But the following discussion assumes an experimental framework of some sort, and seeks to define what that should be.

Comparable or unique evaluation: We suggested, in discussing the Administrative Critic and the Education Attorney, that both were designed to produce roughly the same effects on schools and their clients. Both are intended to increase the schools' fairness in dealing with students and their openness in dealing with parents. For that reason one way to assess their impact would be to determine the extent to which schools changed their methods of dealing with parents and children. Both are intended to achieve this result by concerning themselves with the grievances of students and parents -- albeit in rather different ways -- and for that reason another way to measure their effects would be to assess their impact on the attitudes and behavior of the schools' clients. Did more problems get raised? Did more get resolved? Were more people satisfied as a result?

This similarity of objectives seems extensive enough to make common evaluation of the two efforts possible. This would be desirable for several reasons. First, common evaluation would probably reduce costs. Even if it didn't, though, it would be intellectually wasteful to have different measures of the same phenomenon when more could be learned by having comparable measures. That, of course, is the real point: some comparison of the two experiments would be desirable, because while they are not comparable point-by-point, they are similar enough in intent so that much could be gained from comparing their impact. In both cases, for example, we anticipate effects on the schools' procedures for managing grievances and relating to consumers; it would be useful to know whether one approach was more effective than another.

But if common evaluation seems desirable in principle, we still need to know if it would be possible in practice. The most important problem arises from various selective biases which would undoubtedly be present in any experiment. In the case of the Administrative Critic, for example, school systems cannot be made to try out the idea -- they must volunteer. And there is absolutely no reason to imagine that recalcitrant or resistant systems would advance themselves as condidates for the Administrative Critic experiment, at lease as we have defined the idea. On the other hand, it seems less likely that such problems would be encountered with the Education Attorney. No school system need approve the sites for that experiment, and in fact, many of the stronger LSO's are in precisely the sorts of communities least likely to try out the Administrative Critic. And while Neighborhood Legal Services well might have non-experimental priorities for locating sites for Education Attorney's Offices (if they were interested in pursuing the idea), it is at least possible that NLS would be willing to locate some experimental sites in resistant communities and some in more benignly-disposed places.

If these suppositions are correct, the very best result possible (from the point of view of comparable evaluation), would be a situation in which two sorts of comparisons could be made with respect to the effects of our two proposals on school systems: (1) the relative impact of both approaches in relatively receptive communities, and (2) the relative effectiveness of the Education Attorney's Office in benign and resistant communities. We would not be able to complete the matrix of comparisons by evaluating the relative effects of the Administrative Critic in benign and resistant communities, nor would we be able to assess the relative impact of the Education Attorney and the Administrative Critic in resistant communities.

While these incomplete comparisons are distressing, the complete ones are not unimportant. They would allow us to determine whether the Education Attorney works as well in resistant as in relatively receptive school districts, and to determine whether the Education Attorney was more or less effective than an Administrative Critic in those communities willing to experiment with an Administrative Critic.

It is also important to consider the utility of comparative evaluation for the several other possible outcomes -- to wit, client behavior and attitudes. Given the likely selectivity outlined above, what would a comparative evaluation allow us to find out? Presumably we could determine whether -- in certain sorts of communities -- the Administrative Critic or the Education Attorney had different effects on the attitudes and behavior of students and parents. It also would be possible to find out whether the Education Attorney's Office evoked different consumer responses in resistant school districts than in more receptive ones. Again, these are incomplete comparisons. One also would like to know, for example, how the two approaches affected attitudes and behavior in more resistant districts, but that would be impossible by definition.

Finally, there is one aspect of the evaluation which could not be comparative. The evaluation of the Education Attorney's Office, and of its impact on those local Legal Services Offices in which it would be housed would not fit in any comparative evaluation scheme above.

Given those limitations, it still seems worth while to seek a comparative evaluation framework for the two proposals. While they do not really exist in a trade-off relationship for many communities, the possible differences in their impact on schools and their clients are too important to pass over. And in the last analysis, even if it were impossible to establish community comparability in some cases, it would make more sense to collect the same information on the experimental outcomes.

Having said all this, it leaves us only with a disposition to comparative evaluation -- not a certainty that it would be possible. That would depend partly on whether Neighborhood Legal Services (if they were interested) would agree to some sort of sampling scheme as a basis for the selection of sites, and partly on whether there were funds available to support experiments in more than one or two places. Neither question can be answered in advance of an OEO decision to pursue our proposals.

Criterion measures: Another general issue concerns the selection and ranking of experimental outcomes. We have referred in general terms to three domains: client attitudes; client behavior; and schools' behavior, and we have indicated that the schools' behavior is most important. It would make little sense to go much further unless these three are the correct outcome domains, unless the ranking makes sense, and unless they seem reasonably workable.

The case of the schools' behavior is perhaps clearest. In making the proposals in earlier chapters we argued that broad changes in schools' policy and practice with respect to such things as student classification and student rights would be the most important outcome of either experiment. The reason for this is our assumption that it would be desirable for schools to adopt procedures which would eventually make unnecessary most of the work of the two agencies we propose. Although we can imagine arguments against this (that the most important aim, for example, is to promote continuing conflict within schools), these are really arguments against these experiments, (or against schools), not arguments for one criterion measure as against another.

It is a little more difficult to decide what the proper approach to measuring this criterion would be. One part of the problem is specifying and ranking the areas in which changed policy and procedure would be desired; the other is finding an adequate way to distinguish degrees of progress toward each goal. On the first point, it is possible to identify several areas: policy on student rights; procedures governing student assignment (that is school expulsion, placement in special classes, and placement in ability groups, secondary curricula, and special schools); policy and procedure in discipline cases; and procedures for review of decisions in all of the above areas. There are other, less important areas, such as schools' procedures for dealing with complaints about teachers' attitudes on behavior. We recognize that it would be impossible to devise any absolutely air-tight justification for this weighting scheme, or to achieve general agreement on it. In addition, we do not believe that weighting within the first category is possible. But in our view its importance is clear, both for substantive reasons and because, unlike teacher attitudes, the problems of discipline or assignment can be dealt with by agencies concerned with law or administration.

It seems unlikely that any of these changes in schools could be adequately captured with traditional quantitative techniques, or conventional survey research procedures. It probably would be more appropriate to employ a series of coordinated and comparable case studies to measure the experiment's effects on school systems. Such studies would require a good deal of work in experimental sites -- in advance of the experiment -- to observe existing practices to develop baselines. It also would require extensive work in advance to develop both a workable checklist of the things to be observed, and a high degree of agreement among the observers. In addition, the observation of schools' response to the experiments would have to be accompanied by a high level of interaction among the observers, to make sure that sound bases for comparative judgment were being maintained. It might even be useful to exchange observers among sites, to assure inter-observer reliability. Finally, a good deal of work would have to be done in advance to establish solid operational definitions of success for each element of impact on the school system.

Given comparative case studies of this sort, it would be possible to obtain meaningful and reasonably reliable evidence concerning how the experiments affect the ways in which schools treat students and parents. In addition, of course, case studies of this sort would allow

OEO to learn something about how change takes place, or why it doesn't. In effect, comparative case studies are really the only available way to measure change in exceedingly complex organizations and to establish links between process and outcome. But it is also true that if hypotheses about change processes and alternative process-outcome links were not carefully developed in advance to guide the field work, the result would be disappointing. Absent careful planning in matters of this sort, the evaluators usually never figure out what questions they want to answer until the experiment is over, the data gathered, and the evaluation nearly written.

The second realm of anticipated effects we have mentioned is the impact on consumer behavior. The desired outcome in this case is not as clear as with school system behavior. Certainly the predicted result of either experiment would be that more consumer grievances would be brought to the schools -- after all, one major premise of this report is that such grievances are mostly unrecognized and shunted aside at the present. Consequently it is essential that in any experiment data be collected on changes in the incidents of complaints. The question, however, is whether we would be satisfied to know only whether the flow of complaints increased. We think not.

The reason is that we have no empirical or theoretical standard which will tell us how many complaints should be brought to the schools' attention. Should OEO expect a ten percent increase, or a twenty-five percent rise? There is no way to answer the question -- save by reference to the pre-experiment incidence. What this means, then, is that an evaluation of the experiments we propose could only say that an increase of such-and-such a percent in complaints occurred. They could not say that the increase was half, or three-quarters of what it should be in order to judge the effort a success.

Of course, we think it is likely that complaints would increase -- the idea has considerable face validity. But we also think that complaints would level off, either because the schools institute corrective measures or because there is a finite amount of discontent within any one given time span. We also assume that the plateau in the first instance would be lower than in the second. But we don't have any idea of how much lower, nor do we have any notion of at what level each ought to occur. What is worse, as we pointed out earlier, there is absolutely no empirical or theoretical basis for making any prediction.

One possible solution for this might be to turn to the resolution of grievances as a possible criterion of success: the higher the proportion of grievances resolved in favor of students and parents, one might argue, the more successful the experiment. But this criterion assumes either that consumers of education are always right, or that it is possible to determine exactly what proportion of the time they should be right.

The first, of course, simply is not defensible on any grounds, and the second is impossible. Furthermore, since we have no real conception of how often consumers ought to be right, we have no way of knowing whether a large increase in favorably resolved disputes is a measure of success, or a measure of errors in judgment, agressiveness, or whatever. Finally, the fact is that most disputes will not be resolved one way or the other -- they will be compromised, negotiated, bargained, and settled. How can we determine, then, in whose favor such disputes are settled? The answer is that we cannot -- the question should not only be who won, but what the parties at interest thought about it.

These considerations lead us to two conclusions about using the incidence of complaints as a measure of impact for the two experiments. First, the frequency and disposition of complaints is too clearly an important measure of experimental impact not to use. But since we have no notion of the norms, it becomes very important to determine how students' and parents' satisfaction with schools is affected by each experiment. Or, to put it a little differently, lacking empirical or theoretical norms for the effects on consumer behavior, it is necessary to turn to the only other available norms -- to wit, how well people think the schools are doing, and how satisfied they are.

This, of course, is by no means a simple matter. It is one thing to find out whether people are satisfied with schools, but quite another to determine how satisfied they should be. Nonetheless, one does not begin completely in the dark here. First, there is a fair amount of knowledge about existing levels of satisfaction with schools and other public services. Since we have some sense of how people of different classes and colors presently feel about the schools it provides some baseline against which to compare the effects of any experiment. Second, it would be relatively easy to collect information on existing levels of satisfaction in the population at experimental sites prior to any experiment, thereby providing even better baselines. It also would be possible to collect similar information from comparison or control populations in other sites. Each of these would offer useful anchors -- empirical norms which would help in evaluating the effect of the experiments.

But this deals only with levels of satisfaction in the general population. It also would be important to carry-out follow-up studies of parents and students who brought complaints, to determine whether they thought they had been helped. This is not simply an important dimension of consumer satisfaction, but a way of learning something about how it relates to the disposition of grievances.

Nonetheless, there are several intractable problems involved in the assessment of attitudes and values. One is that most of the available measures are neither highly valid or reliable. Another is that the mechanisms by which attitudes change, or are related to behavior, are mostly a mystery. Satisfaction is probably inconstant, and subject to changes of time, place, and circumstance. Not only that, it probably would be influenced by many things besides an experiment of the sort we propose. Satisfaction, then, is a useful short-term measure of an experiment's effect, but it is of uncertain value as an indicator over the long run.

In summary, then, the three criterion areas proposed for observing the common effects of these two experiments are a mixed bag. They are important, they are the best way to measure the effects we can identify, but they are marked by serious ambiguities. It would be essential to assess the impact on schools' policies and procedures, but there is no air-tight way of identifying which policies and procedures, or of deciding whether some are more important than others. It would be important to measure changes in the incidence of complaints and their disposition, but since we lack any solid norms it would be impossible to define success. It would be important to determine the experiments' impact on levels of satisfaction, but there is no way of deciding how satisfied people should be with schools.

What this means, then, is that while we have three relevant and important ways to observe experimental effects, we do not have any really clear criterion of success apart from pre-experimental conditions. This, of course, is no novelty in social program evaluation, but it seems like less of a problem when measurement conventions and expectations are well established -- such as IQ testing. Lacking historically established norms of this sort, measuring the effects of these experiments will be a good deal easier than deciding whether they are successful.

Finally, this, however, does not take into account the the impact of the Education Attorney's Office on Neighborhood Legal Services, or the question of the Office's internal effectiveness. In our view they are not the top priority in the evaluation of the Education Attorney -- the main question is how it affects the schools and their clients. But whether such an office can be effectively integrated in local LSO's, and whether Education Attorney Offices are internally workable would still be important matters for any evaluation. They are sufficiently special, however, to incline us to the view that if the experiments go forward a separate evaluation should deal with these issues, under the guidance of Neighborhood Legal Services.

Control and comparison groups: So far we have argued that the chief basis for evaluating the effects of the experiments would be pre-experimental measurement of consumer attitudes, the incidence and disposition of complaints, and schools' policies and practices. But while these pre-measures would provide a baseline for measuring change, they would offer no assurance that the change was not unique to those communities in which the experiments were located, or that it did not occur because of other general historical changes in school system behavior or client attitudes.

Assurance on these two points can sometimes be provided by control or comparison groups, but in social experimentation the assurance is never as great as one would like. Because of biases introduced by selection, for example, it typically is impossible to form a genuine control group (that is, a group of subjects representative of the entire population in question, but identical on all important dimensions to the experimental treatment group). Some of these problems are present in the experiments we propose, but not to equal degrees.

We begin by assuming that no matter how assiduously OEO tries, random assignment to experimental and control conditions from the general population of school districts or Legal Service Offices will be impossible. At best, random assignment from a selected pool of Legal Service Offices or school districts will be possible. This assumption is based on the notion expressed much earlier, that Legal

Services would probably not place an experiment of this sort in local offices it considered weak or otherwise unsuited, and that the school districts most likely to resist fairness in dealing with students or parents would be least likely to volunteer for experimentation with the Administrative Critic.

The best this assumption leaves us with as respects assignment is a control group chosen from a pool of applicant school districts and Legal Services Offices thought to be suitable for the experiments, either by themselves (in the case of school districts) or (in the case of LSO's), by the national Legal Services administration, or both. Although we imagine selectivity would be much more acute in the case of school districts, there is no real evidence we can adduce on this point. But this situation means that the experimental results could not be generalized to any population beyond the selected control group, unless non-experimental research was undertaken to determine what differences there were between experimentals, controls, and whatever populations they were thought to represent.

Although this arrangement would not be perfect, as nearly as we can tell it would be satisfactory. Comparing the effects of the experiment with a group of selected controls would answer one important query: were the experimental effects the result of selection? If there were a positive effect in this comparison, it could not be selection, as long as there had been random assignment to experimental and control groups from the pool of selected districts. But external comparisons with non-selected populations would also be required because OEO would want to know how the selected pool differed from the general population in question, and how much of any change might be attributed to more general historical shifts.

This, then, implies the following assignment procedure: roughly twice as many school districts and Legal Services Offices as would be needed for the experiments would have to agree to undertake experiments, and would have to satisfy OEO that they could carry out the task. About half of the selected applicants would then be assigned to the experiments, and the other half to controls. This may not be the easiest way to administer the planning and grant assignment procedure, but we cannot think of any reasons why it would be really administratively unfeasible. And our discussion also assumes the existence of non-selected populations (comparison groups), which would be employed to check initial differences in the character and degree of selection, and to monitor general historical change.

This leaves two main questions. One is what these external comparison groups might be, and the other is what sorts of data on client attitudes and behavior, and on school systems would be collected in the control districts?

We are inclined to use a comparison group only for the evaluation of effects on consumers attitudes and behavior, because to create a comparison group for the study of effects on school systems would not be cost-effective. Case studies of the sort required here would be quite expensive, and the information yield would not be all that great. After all, the purpose of a comparison group in such an experiment is to provide a check on initial selectivity, and on change in the general population from which the experimental group was drawn. That means that for the comparison to have much utility, it would have to be representative of the general population of school districts -- and while that would not be impossible, it would almost surely be unfeasible.

But this injunction probably ought not apply to the evaluation of effects on consumer attitudes and behavior. As is probably already evident (and as we will argue in the following section) this aspect of the work should be carried out mainly by way of survey research on the incidence and disposition of complaints, and on consumer satisfaction with the schools. It would be extremely easy, from a technical point of view, to include most of the critical questions in either a national amalgam survey or a special national survey at the beginning and end of the experiment. This would provide the critical evidence which would allow OEO: (1) to determine the character and extent of selectivity at the outset of the experiment; (2) to determine how much of any experimental effect was really historical; and (3) to provide a general baseline for the estimation of experimental effects.

In effect, then, we are suggesting a design in which: (1) there is random assignment to experimental and control populations from a pre-selected group of school districts, LSO's, and for which all measures will be essentially the same in the two groups, save some abbreviation of the case studies for the control group; and (2) in which a nationally representative comparison sample of individuals is drawn to check on consumer behavior and attitudes, but in which there is no comparison group for the case studies of effects on school systems.

Experimental population: There is one final matter -- the question of whether the experiments should deal only with the poor.

On theoretical grounds we incline toward opening the experiments too all parents and students in the school districts concerned. Our reason for this is simple: one major motive for the experiments we propose is that they would reduce class differences in the fairness with which families are treated by schools. But if they succeed, and are implemented broadly, they would almost surely be available to more than just poor people. As a result, the ultimate question is whether they reduce class differences in school-consumer relations when they are available to the full range of the schools' clientele.

This is not to say, however, that OEO should not be interested in only learning about their effects on poor people -- just that more would be learned from assessing their effects on the non-poor as well.

Matters get a bit more complicated when we turn to the practical side of things, however. One concern is that Neighborhood Legal Services serves only poor people, and it isn't clear that an exception could be made (or would be wise to make), even for an experiment. And in the event that such an exception could be made, the identification of NLS may be such that it would not be used by middle-class clients even if they could.

On balance, our inclination is to recommend that if OEO decides to move forward with the experiments, it should make the effort to extend them to the non-poor. This alternative implies an evaluation design in which impact is assessed for clients from all backgrounds. This would be the best (and most costly) alternative, and the sections which follow are predicated on it. The second alternative would be to confine the Education Attorney to the poor, but not so confine the Administrative Critic. This would be possible, and it would simply mean that the impact of the two could only be compared for poor people, but the Administrative Critic's impact could be compared for the entire range of client groups. The third alternative, of course, would be to confine both experiments only to the poor. While less would be learned in this case, it would still be an immensely productive venture, and well worth OEO's sponsorship. In fact, a respectable argument might be made that OEO's responsibility for assessing the impact on other people than the poor is tenuous, even though the question is obviously vital.

* * *

This portion of the chapter has covered the four main general problems confronting the evaluation of the agencies proposed earlier: whether the evaluation will deal with an experiment or a demonstration; whether the evaluation will provide comparative evidence on the effectiveness of these two approaches to protecting families' interest in schooling; what the criterion measures are and how they might be operationalized; and whether control and comparison groups are feasable. We have argued for an experimental approach, relying on random assignment from a selected pool of applicants and the extensive use of comparisons.

We have sketched in the approaches to measuring impact we think crucial, and have argued that a comparative evaluation is possible.

We now must turn to more detailed consideration of some of these issues, in order to see what our decisions thus far imply for measurement, site selection, scheduling, and costs.

B. WORK BREAKDOWN AND SCHEDULE

In this section we identify the main elements in the evaluation work in some more detail, and frame them in the context of a rough schedule. Although this is preliminary, it is the only way to produce more or less concrete judgments about timing, costs, and staff requirements. The discussion will be organized around the three areas proposed above for measuring experimental effects, because they would be the anchors around which the evaluation effort would be organized.

Effects on schools: Work on this part of the evaluation would be organized in six main portions:

> --The development of criterion measures. The first matter here would be specifying areas of impact and, if possible, weighting them in some rough way. Our conclusion is that there are several top priority areas: student rights, discipline, school exclusion, student classification (tracking, grouping, special class assignment, etc.), and procedures for review of school decisions. There also are other important, but not top priority matters: teacher attitudes, participation in school activities (especially in biracial schools), etc.
>
> The second problem, which is more difficult, is defining these areas in such a way that observers would more or less agree about how much progress a given school system had made toward each one.

As we pointed out earlier, this is partly a value judgment but it is necessary in order to achieve comparable observation. What would be required is several alternative but clearly specified definitions of success for each element. In this way observers could have clear reference points for their judgments and disagreements.

In effect, then, the main task here would be to develop a limited and clearly specified set of descriptions of objectives. Some of these would be internally inconsistent, but it is important to bear in mind the purpose of all this -- to give the observers a clear frame of reference to which their work can be related. Without that comparative case studies are impossible. Disagreement within that frame of reference is acceptable, because the terms of the argument would be the same, and reasonably well specified.

--The development of an approach to studying the evolution of the experiments. The first main point here would be identifying alternative hypotheses or scenarios concerning the ways in which the experiments would develop. One can imagine, for example. that the Administrative Critic could be co-opted by the school system, on the model of many existing federal and state regulatory agencies; or the agency might be effective but incapable of working well enough with teachers, with the result that their professional organizations would cripple it in negotiations with the Board of Education; or that the agency would be effective, but only with one element of the population (students? blacks? whites?), thereby losing the broad support required for continued life; or one can imagine that it would avoid all of these problems and function fairly effectively in addition. Doubtless there are other alternatives; they would have to be identified, and the crucial symptoms of each (i.e., evidence that it was the case) specified. In this way the observational work would be given structure and direction in advance, and a common framework for discourse.

In addition, it would be necessary to establish some conventions for the case studies. Most of these would involve the question of who would be studying what, where, and when. It wouldn't do, for example, to have a study at one site ignore the response of teachers if all the others were paying attention to this. While some of these problems would be solved by specifying what is to be observed and how, some can only be resolved by taking the next step, and defining the sources of information, the various interests, groups, and institutions that would have to be contacted, etc.

--Training the research workers. This would have to occur at the same time as the development of the case study methodologies and criterion measure definition. And it is hard to think of a better training device than simply having the evaluation group carry out both tasks.

If this last assertion is correct, then, these three tasks would fall together chronologically. In addition to developing the measures and methodologies, it would be wise to undertake some brief field tests. One purpose of these, of course, would be to try out and refine the measures. But a more important objective would be to train the research workers, to improve inter-observer reliability.

It is true that in an experiment involving quite a few sites the entire staff of observers would not actually be required to finish just the work on methodology and criterion measure development. But the inefficiencies of involving more people than necessary in the development of measures and methodologies would probably be gained back several times in the quality of the observational work, because the experience of developing the measures and methods would be extremely good training.

It is hard to see how all this could be accomplished well in less than six months from the time of actual start-up on the measure and methodology development. If it were done in substantially less than six months -- even with a very experienced group -- the pace would be frantic, and the result would probably be appreciably worse. If anything, we would suggest a bit more than six months for measure development and training.

The next group of three tasks relate to monitoring the experiments themselves:

--The first large portion of work would involve establishing the baseline measures for the experiment. This would require a full-scale case study of each school system involved in the effort (experimental and control), using the measures and methodologies developed during the planning and training phase. The purpose of this part of the evaluation would be to establish the character of school policy and practice in the criterion areas mentioned above, and to determine if there was any pattern of change underway before the experiment began. In order to accomplish this it would be necessary to get a complete picture, not only of school policy and practice in the areas mentioned earlier, but of such other crucial areas as the relations between the Board and the school administration, the character of the relationship between organized interests of various sorts (teachers, tax-payers groups, community organizations, etc.), and the schools, and so on. In a nutshell, this aspect of the study should not only be a status report on school policy and practice on the criterion measures, but a pretty comprehensive account of the ways in which decisions get made and executed. If this were not done, it would be impossible to achieve a clear picture of either the dynamics of change arising from the experiments, or of any secondary effects which they might have.

The duration of this effort would in part be a function of how many staff were assigned to each site, and in part a function of how large the school systems in question were. But even if we make an optimistic assumption (large staffs and small school districts), it is hard to see how such as effort could be completed in less than four or five months. And since the combination is much more likely to be a medium to large city and a small staff, it would be sensible to figure on six to eight months at a minimum. Even in that time it would be a struggle to complete such a study.

--The second task involved in monitoring the experiments would involve tracking their implementation and effects over its entire duration. A minimum of two years' full operation should be allowed, and since the first year of any such novel institution (at least) is given over to a good deal of groping, the duration should be set at a minimum of three years -- not including the planning period itself.

This, of course, is the central task in of the evaluation, but its effectiveness will depend largely on how well the preceding steps have been executed. There are, however, a few points worth noting. One is that the work load will be such that one observer per experimental site should be sufficient. In fact, we think that each observer could also handle one control site as well, as long as it were clear that the studies in the second sites were to be abbreviated. But as a corollary to that, it would be of considerable importance to maintain a high level of interchange among the observers at all sites. For the less interchange the less comparable the studies would turn out to be. This undoubtedly would require several efforts. One might be a schedule of interim reports on specific subjects at fairly close intervals (every few months), which could be circulated and used as the basis for discussions among the observers at regular meetings. Another would be exchanging sites temporarily, or pairing observers occasionally, to provide some independent check on the reliability of observations. Another would be a fair amount of site visiting by those members of the central evaluation staff assigned to managing these studies, to maintain contact and check on consistency. A final device, which would be important to other aspects of the evaluation work as well, would be an annual status report (which could be done over the summers).

--The final phase of monitoring the experiments should consist of observation of the effects after the withdrawal of OEO support. Ideally this would take the form of an extended visit after one year, and another after three. The form of these reports would be a replica of the final report itself -- that is, a status report on the school system's policy and procedures in the areas identified at the outset of this section. But it probably is unrealistic to think of anything but a one year follow-up visit.

What does all this imply with respect to staffing and schedule?

In the case of staffing, this discussion of the case studies of effects on school systems suggests the need for one full-time observer per site, and at least two central staff members to coordinate their work, train them, and supervise the development of measures and methodologies. (The need for central staff would depend on the number of sites.) All of these staff people would have to be pretty highly trained, but they could -- and perhaps should -- be drawn from a variety of backgrounds such as law, social science, journalism, etc.

The implications of this discussion for scheduling the evaluation of effects on school systems are pretty clear already. A minimum of twelve to fourteen months would be required for planning, training, and development work, and for the baseline studies. The experiments would have to be monitored for their duration -- a minimum of three years-- and at least one relatively brief follow-up visit should be made roughly a year after OEO funds are withdrawn. Since most of the year after operational support was withdrawn would be taken up with preparation of a final report on this aspect of the evaluation, this suggests a five year evaluation effort.

Effects on consumer behavior: As in the case of effects on school systems, the evaluation of effects on consumer behavior would fall into three rough work periods: planning and design; monitoring the experiment; and follow-up studies. In addition, the specific tasks also roughly parallel those in the assessment of effects on school systems: the specification of criterion measures, developing the evaluation methodology, and training and field testing.

--Developing criterion measures. Since the matter in question here is the incidence and resolution of consumer grievances, one way to approach the criterion measure issue is simply to let them be defined by consumers. All that would be required on this view would be a category system for any possible grievance, so that the research could procede smoothly.

While this approach is satisfactory as a way of monitoring the incidence of problems which come to light, it would not help to understand why some problems seemed to require action and others did not. In other words, simply to focus on complaints brought would close out the chance to learn something about how consumers set priorities and respond to the existing machinery for resolving grievances. Since the pattern of problems which come to the surface may have something to do with the ways in which schools operate, this would be a useful matter to explore.

This implies not simply a category system for consumer grievances, but an inquiry into why some particular problems were recogized and raised while others remained undisturbed.

Finally, it would be necessary to develop a way of rating the resolution of complaints, so that some more or less "objective" measure of were could be created. Since there is no such thing as a perfectly objective measure of this sort, the alternatives are either a pooled index of the views of the participants , or the judgment of independent observers. From a technical point of view the second is more desirable, but from the point of view of time, costs, and logistics, the first would be far easier.

--But this entire matter is really inseparable from the question of how the measures will be implemented, where, and for whom. There are two distinct issues in measuring the incidence and disposition of complaints. One thing we want to know is whether an experiment affects the frequency with which complaints are brought and what kind of complaints are raised in the general population. That is, we want to know if an experiment produces more complaints (and if so how many); or a different sort of grievance (and if so, what);we would also like to know if it affects the direction of decisions about them, and if so, how. For each of these questions, we need answers which are representative of the populations of students and parents in the experimental communities. And in order to obtain such estimates, survey research would be required. The identical research would be required in control communities, and measurement would have to be carried out at three points in time: (1) before the experiments began baseline data would have to be collected; (2) just prior to the termination of OEO operational support (the end of the third year of the experiments' operation) the initial measures would be re-administered; and (3) a year or so after OEO support was withdrawn they should be administered again.

There are several other points about this work which ought to be noted quickly. One is that the student and parent populations would be treated differently, so that representative samples of each group should be interviewed. These samples might be stratified by age for students (junior as against senior high school, with others excluded), and by race for both populations.

Another is that attrition in such samples is great, so that if follow-up studies of individuals were desired, we would recommend oversampling all strata by forty or fifty percent, and trying to keep tabs on those who move. But since OEO would be mainly interested in general estimates about incidence in the population in this aspect of the study, we can see no real reason to view the second two waves of interviews as follow-ups of the first. It would be cheaper, easier, faster, and just as effective to draw new samples.

Another, is that it would be extremely useful to have the data gathered in this aspect of the evaluation also collected from comparison groups of parents and students, so that the degree of selectivity and historical change could be checked. These comparison groups should be created in such a way as to provide nationally valid estimates of the incidence, character, and disposition of complaints. There are, however, two questions here that cannot be answered at this stage. One is the difficulty of composing a national sample of students (all we know about is schools, but we can see no reason why they could not be used validly as PSU's). The other is which national population the parents and students would represent. If all the experiments were in the North, it would be silly to go beyond that in the comparisons. And if all the experiments were in medium-sized cities (which we will argue later seems reasonable from some perspectives), it would be a serious mistake to include big-city respondents in the comparison group.

Finally, it is important to recognize the limits of survey research in helping us to understand the effects of such experiments as we have proposed. Surveys can provide valid information on the incidence of school-consumer problems, they can tell us what consumers thought the problems were, why they raised them, how they thought they were resolved, and (we will come to this in the next section) what they thought about the resolution. That is, the survey instrument can provide a good deal of information of a general sort, but it cannot provide a complete picture of the consumer's individual problem (surveys should be brief, and mostly composed of closed-end queries), it cannot provide a rounded picture of how the problem was managed (only the consumer is responding), nor can it offer a balanced view of whose interests the disposition favored. The survey, in a word, is a good way of getting broad population estimates on several important general points, (the most important of which the incidence of complaints, and consumer attitudes), but it is not a proper vehicle for learning much in detail about either the character or disposition of individual complaints.

Which brings us to the second approach we would suggest to evaluating the experiments' effects on the incidence, character, and disposition of complaints. Detailed studies of actual complaints should be undertaken, to provide satisfactory information on their character and disposition. These studies would have several objects. First, to find out precisely what problem students or parents thought they were bringing to the agency, and what they expected as a result of their effort. Second, to trace the ways in which the problem was managed -- which is to say, how it was perceived and used by either of the agencies we have proposed. Third, to provide as balanced a picture as possible of the way in which complaints were resolved.

The first of these purposes could be served with very little trouble by conducting intake interviews with a random sample of complaints -- as long as the interviews could be conducted rather quickly after each matter came to the agency's attention. The second purpose would require what amounts to a brief case study of these complaints, as they were either rejected, resolved immediately, or made their way through various stages and channels. These would take a bit more time, but once again would have to be carried out while the trail was still more or less warm. And the third matter would require fairly precise interviews with the parties involved in the disposition of each grievance, to achieve some composite picture of the result.

> As this brief description suggests, unless this work was carefully structured, it could grow into an immense and unmanageable effort. And if it did grow too large, the information would become less and less usable as a basis for generating summary estimates. Consequently, we would incline to the idea of drawing up a highly structured interview form which could be used to gather the essential information. And while some of it could be completed by program staff, it would be much better to have the information gathered by the evaluators. Since this information should be gathered over the entire course of the experiment — baseline measures prior to its inception would be desireable, but probably impossible to execute -- this work would require the assignment of evaluation staff to sites (one person might be able to cover two sites if they were not very far apart).

The implications of all this for scheduling the evaluation are not too dissimilar from the rough calendar identified for the case studies of school system effects. It would take six or eight months to do a good job of developing and field testing measures, drawing new samples, field testing instruments, and training interviewers. And while the pre-measures would not take as long to carry out as those in the case studies (interviewers should be able to be out of the field in two months), the data preparation would take several months, before analysis of the first wave of interviews could begin. Thus, a year would be the minimum requirement for measure development, planning, training, field testing, and establishing baseline measures. The remainder of the schedule would pretty closely parallel the one outlined earlier for the case studies.

As far as staffing is concerned, most of this discussion involves survey research, which should be contracted to a national survey organization. Thus, aside from making sure that the central evaluation group had staff members competent to design and monitor such survey research, and capable of carrying out the analysis, this part of the evaluation would have little impact on staffing the evaluation. But monitoring the disposition of grievances would require a permanent staff located on the sites (experimental only, since this sort of information could not be collected on the controls). Probably this would work out to require about the half-time services of one person per site.

Effects on consumer attitudes: Apart from the criterion measures themselves, almost everything in this realm is identical to the survey research on parent and student behavior described in the preceding section. The need for control and comparison groups, the schedule, and the timing of the research all would be the same in both cases. As a result, the discussion here will be restricted to the measurement of consumer attitudes:

> --Since the detailed follow-up studies of actual complainants will evoke their views of the disposition of their problems, this aspect of the evaluation should focus on changes in the general level of satisfaction with schools in the experimental, control, and comparison groups. This would be carried out at the same time, and using the same instruments and interviewers as the survey research discussed earlier. Our work thus far suggests that this aspect of the evaluation should focus on several general areas of concern. One is perceptions of the schools' fairness in dealing with students and parents. Another is parents' and students' sense of the extent to which the schools seem to be favoring special interest groups of one sort or another, and a third is in their view of the schools' openness, or responsiveness to individual students or parents. Fourth, several questions should be devoted to parents' general level of satisfaction with the schools.
>
> Most of these areas have been explored before in survey research, and in several cases there is a group of questions whose properties are pretty well known.

C. SITES AND COSTS

The previous section leaves us with roughly a five or six year effort: slightly more than a year for planning, measure development, and baselines; three years for monitoring the experiment; a terminal year and one half for data analysis, final follow-up studies and writing up the final reports.

Some of the cost data could be produced from the material presented thus far, but complete estimates require information on the number of sites and the operational costs of the projects. We will, therefore, turn to these first, and then consider the evaluation budget.

Number of Sites: This is a difficult matter to discuss, since the constraints could be set more by circumstances outside the control of OEO than by that agency's decisions. But there are a few guidelines which may be useful.

First, the cost of the experiments will be influenced by the size of the cities in which they would be located; larger cities would require larger staffs, and the experiments, as we pointed out earlier, require an entire jurisdiction. This puts a powerful premium on avoiding the larger cities. We would incline toward this idea, not only for cost reasons, but also because it would make the entire effort a good deal easier. Something might be lost in the way of generalizability, but if everything else went well and this were still a problem, later replications could deal with it.

It would, however, be a mistake to mount either experiment in small school districts -- simply because outside the South most of them are full of people OEO is not obliged to attend to. Thus, OEO should try to locate the experiments in school districts of medium size -- roughly those enrolling between twenty-five and one hundred thousand students. This implies urban school systems. It probably also makes sense to keep all the projects in the North and West; regional differences between these parts of the country and the South -- to say nothing of logistics -- would needlessly complicate many aspects of the evaluation.

The most difficult issue is the number of experimental sites. Inevitably there is a tension between the need for a decent number of data points and the costs and administrative problems of a large operation After worrying the issue from several directions we finally decided that the minimum number of sites for each experiment should be three or four, because much less than that would amount, *de facto* to a demonstration. Probably the maximum number for each experiment would be seven or eight, because trying to manage more than that number of large innovations would probably be impossible. The upper limit of these estimates is based mostly on the experience of other recent experiments (Headstart Planned Variation and Follow-Through, for example), where it seems that consistency among the larger sponsors -- especially when the treatment is complex -- is hard to maintain. The lower estimate is based simply on the presumption that in some critical areas (impact on school systems, especially), two or even three districts would yield results in which one could have little confidence, unless (unlikely event) there were absolute consistency.

All of our struggling with this makes it plain that there is some guesswork in this. But we have concluded that if OEO were able to support an experiment in which between four and six sites existed for each of the two proposals (a total of eight to twelve experimental sites), it would have hit on the most nearly ideal arrangement we can envision. An effort of that size would be administrable, although it would be a job of absolutely major proportions. It also would yield evaluative results which could be regarded with some confidence.

That, of course, implies a roughly equal number of control sites (for evaluation, not operational purposes), and therefore it also would require a planning and application generating effort of no mean proportions. We will turn to both once we have considered the operational costs of the experiments themselves.

Cost of Operation: The following discussion of costs makes several assumptions which might best be spelled out at the beginning. One is that the central control and direction of the experiment would be jointly managed in some fashion by OEO and a prime evaluation contractor--with most of the managerial resources employed by the contractor. We assume that OEO would concern itself primarily with monitoring the contractor. Another is that the costs of fieldwork and planning for the experiments are distinct from their operation and evaluation; the former are discussed in the final section of this chapter. A third is that the operating budgets for the experimental agencies should be moderately conservative, on the assumption that having too much business is better than having too little. But since no evaluation plan known to us has ever anticipated every contigency (this is our last assumption), we have been a bit less cautious in budgeting that aspect of the work.

The operating costs for the Administrative Critic and the Education Attorney consist almost entirely of personnel costs. There would be no unique central staff apart from what we just mentioned, nor any travel, or other expenses. For the Administrative Critic, the annual breakdown appropriate for a medium sized city would be roughly as follows:

Director (1)	25,000
Senior Analysts (2)	28,000
Education Specialist (1)	14,000
Aide Supervisor (1)	14,000
Neighborhood aides (10)	100,000
Secretaries (4)	24,000
Personnel subtotal	205,000
Fringe at @ 10%	20,500
Total personnel	225,500
Office expenses (Xerox, phone, postage, etc.)	40,000
Total Direct Costs	265,500
Indirect costs at @ 25%	66,375
Grand Total	331,875

If we assume a cost sharing arrangement in which local schools pay ten or twenty percent of the operating costs -- which strikes us as extremely reasonable -- the total annual cost per site of the Administrative Critic would be roughly $275,000. The project would run for three years, so the total operational cost to OEO per site would be on the order of $825,000. Multiplied by the five sites we have assumed, this would yield a total three year operating budget (OEO money only) for the Administrative Critic of roughly four million dollars. If the assumed cost sharing is included the total costs for this part of the proposed experiment would be on the order of 5.4 million.

The operating costs of the Education Attorney's Office would be of roughly the same magnitude. Our calculations are as follows:

Senior Attorney (1)	20,000
Aide Supervisor (1)	14,000
Education Specialist (1)	14,000
Neighborhood Aides (10)	100,000
Secretaries (3)	18,000
Consultants @ $75 per day, 120 days	9,000
Personnel Subtotal	175,000
Fringe at @ 10%	17,500
Total personnel	192,500
Office expenses	25,000
Total Direct Costs	217,500
Indirect costs at @ 25%	54,375
Grand Total	271,875

There would, of course, be no local cost sharing in such an effort. Although NLS would have to pay part of the operating cost, we cannot determine what a reasonable percentage on this might be and, therefore, leave it open. Given this annual cost per site, the three year per site cost would be on the order of $815,000 and the total three year operating budget for the assumed five sites would be on the order of 4.1 million dollars.

Thus, the combined three year total operating costs of the experiments we have proposed (all sources), would be something like 9.5 million dollars, or just over 3.1 million dollars per year. Since there are no economies of scale in this part of the operation we have proposed, every increase or decrease of two in the number of sites would produce an annual change of roughly .6 to .7 million dollars. Thus, if the number of sites were reduced to eight, the annual budget would be roughly 2.4 million; if it were reduced to six, the annual budget would be roughly 1.8 million dollars.

There is one final point worth mentioning. Both operating budgets just described contain resources for training, in the size of the staff and the allocation of senior supervisory staff. Staff sizes were increased slightly over what we thought necessary for operation to leave time open for training.

Evaluation Costs: Again for the purpose of computing costs we assume ten sites in medium sized cities and an equal number of control sites. We have broken the budget down in a roughly chronological fashion, so that planning and design, monitoring, and close-out costs are displayed separately. Most of the rest is self-explanatory, save our assumption of a central evaluation office which would administer the experiments, design and supervise the evaluation, perform most of the data analysis, and monitor the implementation and management of the experiments themselves. The latter cost has been included here simply because in our experience it makes little sense to separate design and management from evaluation. OEO should probably sponsor some limited independent evaluation in addition to what we have proposed, and perhaps an independent audit of the main evaluation, but in genuine experiments we do not believe the separation of design and management from evaluation is warranted, as is typically the case in operating programs.

Planning and Design (one year)

This portion of the budget assumes the need for the entire central evaluation and management unit in operation for a full year in advance of the operational phase, in order to design measures and carry-out the baseline measurement. The costs would be as follows:

Central Office

Director (1)	30,000
Associate Director for management and control (1)	25,000
Staff Associates (2)	28,000
Associate Director for Evaluation (1)	25,000
Site Observers for Experimental Sites (10)	150,000
Site Observers for Control Sites (5)	75,000
Senior Evaluative Analysts (2)	28,000
Research Associates (2)	24,000
Research Assistants (4)	32,000
Secretaries (6)	36,000
Personnel Subtotal	433,000
Fringe @ 10%	43,300
TOTAL PERSONNEL	476,300
Central Office Expenses	110,000
*Local Office Expenses (20 sites)	160,000
Travel (eight five-day trips to each of 20 sites @ $150/trip	24,000

Per diem (800 site days @ $20 per day)	16,000
Total Direct Costs	786,300
Indirect Costs at @ 25%	197,575
Total Cost	982,875

These costs would complete the design and baseline measure stage save the survey research. The next phase would be monitoring the projects.

Project Monitoring (three years)

The budget for this part of the evaluation has several parts. The annual costs of maintaining the central office operation just budgeted would remain essentially the same with some adjustments in: travel costs to cover inter-site travel (adding two trips a year for two weeks per trip for each of twenty sites at $150 per trip = $6,000); site-to-central office conference travel (three trips for each site to the central office, at the same rate= $9,000); and in the local office budgets (multiplying by two to stretch them out over a full year increases that line to $320,000). This produces a central and local office maintainance budget of the following dimensions (lines as above):

Total Personnel	476,300
Total other expenses	485,000
Total direct costs	961,300
Total indirect costs at @ 25%	240,325
Total costs per year	1,201,625

In addition, however, funds would be required to support the survey research. Two surveys, as we argued earlier (one predating the experiment and one at their conclusion) would be essential. A third, a year after OEO phased out also would be highly desirable. The costs, assuming that the prime contractor would do much of the design and all of the analysis, would be roughly as follows:

Survey 200 parents and 200 students in each of twenty sites, assuming forty minute interviews, and a per-interview cost of $45 (which includes coding, punching, and cleaning the data, and transferring it to magnetic tape). Two surveys:	720,000
One follow-up survey, a year after OEO close-out of operations:	360,000
	1,080,000

In addition, we have recommended that two national surveys of comparison groups of parents and students should be carried out at the same time as the first two surveys in the experimental and control sites. These would require new sampling frames (on our assumptions, one for middle-sized cities and another for schools/students), so a per-interview cost of $50 is probably justified. Assuming a national sample size of roughly 1,200 for each survey, these surveys could not cost less than $110,000, for each of the two times, or a total of $220,000. This produces a total survey research budget of $1,300,000.

The last element in the evaluation costs is the budget for the close-out operation of the evaluation and management office, a period we have estimated at roughly eighteen months. We expect that close-out operations would run at roughly the same level as project monitoring, not only because the analysis and writing burden would peak during this period, but also because there would be a heavy management load in disengaging the experiments themselves and cleaning up OEO's involvement in operations. As a result, we simply multiplied the annual evaluation and management cost by 1.5, which comes to roughly 1.8 million dollars.

Total Evaluation Costs

The total cost of the evaluation and management, then, would run to roughly 7.68 million dollars. Annualized over the six years, this comes to a little more than 1.2 million a year, but the costs would not fall evenly in an annual sequence. The actual cost calendar would be more like the following:

Survey research total	470,000
Evaluation and Management	982,875
Total First Year Cost	1,452,000
Second Year Monitoring (Total)	1,201,625
Third Year Monitoring (Total)	1,201,625
Fourth Year Monitoring	1,201,625
Fourth Year Survey Research	470,000
Fourth Year Total	1,671,625
Close-out Period (1.5 years)	
Monitoring	1,800,000
Survey Research	360,000
Total Close-out	2,160,875
TOTAL	7,686,875

Combined Total Costs: Combining these calculations with our extimates of the costs of operating the experiments, the total six year cost of the proposal is nearly sixteen million dollars. Because the amounts would fluctuate pretty wildly from year to year, it seemed sensible to produce an annual budget for the combined operational and evaluation efforts.

The results are as follows:

Year one (plan and design	982,875
Year two (first operational)	4,301,625
Year three (second operational)	4,301,625
Year four (third operational)	4,771,625
Close-out period	2,160,000
TOTAL	16,217,750

As this makes clear, the major OEO effort would be required in the three operational years.

D. PLANNING FOR AN EXPERIMENT

It only remains, then, to set out the time and costs required to get OEO from the submission of this report to the first day of the planning year. This work would fall into several reasonably discrete chunks: completing the present study; launching and carrying out a search for applicants; the application planning and application process; and developing capacity for the evaluation.

Completing the Present Study: If, on the basis of this report, OEO decided to move ahead toward an experiment, the first step would be to turn the present draft report into a finished product, which could be used as a basis for publicizing the idea, contacting schools, conducting serious discussions with Neighborhood Legal Services, etc. In order to do that the existing document would have to be edited, and revised in response to criticisms. In addition, we would suggest developing a twelve or fifteen page summary of the entire document, and a summary of each of the proposals, with complete budget and schedule information. It would take roughly six weeks to produce these materials from the time the decision (and comments) was made clear. It would take another few weeks to get the materials produced and ready for distribution.

Applicant Search: This could begin at the same time as the study completion above, because there should be an initial period of pre-contact preparation. One of the central tasks in this early phase would be preparing a mailing (to include the materials on the Administrative Critic just mentioned) to all school districts which fall into the appropriate size category. This would take a few weeks.

A second task would be making contact with the appropriate school-related organizations (National School Board Association, NEA, AFT, national community and civic organizations) to explore and explain the proposals, seek support, suggestions, and possible applicants. The outcome of this effort would be some support, and a list of potential districts. It would take six or eight weeks, at least.

A third task would be to open discussions with Neighborhood Legal Services, to ascertain the possible level of their interest. This should take a short time only if they are negative. If there is interest, it would take at least six to eight weeks to reach a tentative decision to continue into a search for applicants within NLS, or not.

Thus, the earliest possible time that OEO could have a contractor move into the field in search of applicants would be two months from initiating this activity. Assuming that a fairly considerable list is developed from informal contacts, and assuming some response to the mailings, it would take at least six months to produce a fair pool of applicant school districts, and more likely it would take ten to twelve.

It should not take longer: if it does, it probably is a sign that the notion will not find support. NLS would take much less time once it made a decision to designate LSO's, but if the effort is to be synchronized for evaluation there would have to be a delay until the school projects were identified.

Assuming a ten month field period to identify applicants, and a desire to have a pool of at least twenty acceptable applicants, OEO would have to support a field staff of five full time people, plus a corps of full and part-time local consultants in promising sites (for the last three or four months only in most places). In addition, central office staff of three (the project director, an assistant director, and an office manager) would be needed to supervise the field work, and carry out the earlier tasks mentioned just above. We can see no reason why that staff could not carry on whatever liason with NLS that was required.

Application and Planning: Assuming a pool of twenty successful applicants (ten of which would be school systems), OEO's contractor would have to generate as large a number of applicant school systems as possible from which to winnow the best applications. Thirty strong prospects would not be too large a number.

This could best be achieved by requiring an initial letter proposal from interested school boards, stating their interest in applying, their willingness to explore the adoption of the proposed Administrative Critic, and the resources they plan to commit to the proposed development. This initial pool of letter proposals could be whittled down to a group of no more than thirty, which would receive small matching grants from OEO (no more than $2,000), to help support a two month application development program within the schools. This process would involve the Board and the relevant interested parties, and would be the initial serious political litmus test for solid applicants. We imagine that at least one-third would be unable to complete the application so that it would meet the specifications spelled out in this report.

The ensuing applications (no more than twenty), would be considered by OEO at the end of the two month period, and on the basis of their merits and the evaluations of the sites made by OEO's contractor, the number pared down to ten; this should take no more than a few weeks. Half would then be assigned to experimental and half to the control conditions, and they would be so notified. Any which did not sign contracts to procede with planning at that point could be replaced from the remaining pool of near-misses.

The remaining planning process should take not more than six months, and it might well take less. What would remain for this period would be final Board passage of an authorizing resolution, and the recruitment of staff. OEO's contractor for the field work could expedite the latter process by compiling, during the field work, a list of potential project directors which could be made available to the schools and to NLS as well.

Thus, the calendar to this point should look something like this:

OEO decides to procede with completion of report, development of summaries, and initiation of search. Central office staff hired.	October 1, 1971
Report in final draft, new materials produced and ready for mail, search process and organizational contacting underway. Full field search begins, field staff hired.	December 1, 1971

Field work four months old, many prospects identified, main effort to identify and hire local consultants begins.	March 1, 1972
Letter proposals in; OEO decides on strongest for planning grants, planning grants awarded.	June 1, 1972
Initial planning period closed, applications submitted to OEO.	September 1, 1972
OEO considers applications and site evaluations, and decides on a pool of ten school districts; receives list of twenty LSO's willing to undertake Education Attorney project, and decides on ten strongest of those. Assignment to experimental and control groups, and notification to recipients.	October 1, 1972
Drop-outs and substitutions, final list of projects complete, contracts for pre-operational planning and first year of operation let.	November 1, 1972
Report on field work submitted, contract for field work ends.	January 1, 1972

This is rather a tight schedule, but it is possible, assuming a minimum of slippage, and it goes without saying that the start-up date is arbitrary -- it could be months later. But, as the schedule reveals, the end of the field work is the beginning of the evaluation and management task for the experiment itself, and that is the final pre-operational task.

Development of Evaluation Capacity: According to our discussion of the evaluation, at least one year would be required to gear up for the experiment, develop measures, train staff, and take the pre-measures. If the latter task involves six months, as we said, then there must be a six month gap between awarding contracts and their becoming operational (or vastly abbreviated pre-measures), and the former is preferable. This would push initial operation to June of 1972 or more than one and one-half years from the decision to procede. This may seem like a long time, but the experience of all other such experiments suggests it is very, very near.

What is more, an agency capable of evaluating and managing such an effort could not be created overnight. It probably would take six months effort to have most of the staff hired. As a result, if a tight schedule were to be maintained, the contract for this work would have to be let such that the pre-measure work could begin at the same time as the contracts for the first year were let -- November 1, 1972. This, in turn, implies a previous six months of measure development and training (beginning roughly May 1, 1972). If our estimates of roughly half a year to staff up are correct, the contract for this aspect of the work would have to be let no later than November 1, 1971 -- or roughly the time when the field search for applicants could (earliest) begin. Again, a very tight schedule, but possible.

Planning Costs: In any event, this schedule and plan of work can be translated into an estimate of the resources needed to get OEO from here to operational projects. The breakdown is as follows:

Central Office (15 months, Oct. 1, '71 to Jan. 1, '73)

Staff	
Director	37,500
Asst. Dir.	30,000
Office Mgr.	15,000
Fringe, @ 10%	8,250
Travel	
50 trips, @ 150 per	7,500
per diem, @ 22 per day	2,200

Publications	3,400
Casual Labor	2,500
Mailing	800
Office Expenses	50,000
Subtotal, Central Office	112,150

Field Work (Assume 10 months)

Field Representatives, full time (5)	100,000
Local Consultants (1.5 per site, 30 sites, for full time for four months @ $75 per day) = 2,700 consultant days	202,500
Travel for field representatives, one trip to sixty sites, two to thirty, and three to twenty = 110 trips @ $150 per	16,500
Field representatives per diem, 110 trips at an average of three days per trip = 330 trip days, @ $22 per	7,260
Telephone (separate from office expenses above)	8,000
Subtotal, field work	334,260
Total direct costs	446,410
Indirect at @ 25%	111,602
Total planning costs	558,012

Now, in addition to this, OEO would have to bear the cost of roughly six months' start-up for the evaluation and management prime contractor; although it is hard to estimate this, there really is no reason that it should exceed the six month salary of its director, assistant director, and a secretary, plus the associated direct and indirect and indirect expenses. Assuming they were all working full-time for the start-up period, the cost would be about \$40,000 in direct costs, roughly \$10,000 in indirect costs, for a total of about \$50,000. This would increase the budget we just outlined to \$608, 102. In our view it is adequate for planning such an experiment, assuming the rather narrow time frame given above.

CHAPTER V: CONSUMER UNIONS

Throughout this report we have suggested that consumer organization is the most direct way to redress the present imbalance between families and government. Each of our proposals attempts to provide assistance to families in recognizing their interests and resolving disputes; if implemented, these proposals would help to ensure that families' interests in schooling were not subverted. We have pointed out, however, that while such assistance is compatible with consumer organization, it is not likely to produce such organization. And for reasons discussed earlier in this report, we are inclined to think that consumers should organize and enter the decision-making and delivery processes to protect their interests. But as we have suggested at several points, there are several problems with this view.

First, it is not clear whether government could assist in organizing consumers initially, or provide on-going assistance. Our skepticism about government directly organizing consumers arises partly from our view that consumer organizations might not fare well if they were public instead of private. Could a public consumer union be independent of the governmental organizer? We suspect not -- there would be negative reactions to one part of government assisting the organization of consumers to attack another part of government.

Yet there is some precedent for one government agency representing consumers' interests against another agency. The federal government has, for example, acted to protect the interests of the poor, blacks, and labor against government. The recent activities of CAP and Model Cities agencies have often pitted community groups supported by federal dollars against local governments. Some of these activities have failed, but others have met with some success: the failures may suggest that the particular type of governmental assistance and consumer organizing marked by these efforts may have been inappropriate, but not that other approaches could not succeed. In addition, state governments, tired of pumping increasing aid into local schools, may support new approaches to increasing the quality of these services, or the efficiency and fairness of their delivery.

Government also might support for public service consumer unions which exist. For example, public funds could create an incentive for membership by making aid vary with the number of members. Or a quasi-government agency could be created to provide information about public services and to assist in training staff for consumer groups. Or government could contract for consumer evaluations for public services, or could provide indirect assistance to existing consumer groups by way of technical services, training, and logistical support.

One type of government response could be essential to the success of any consumer organization in education -- local schools must recognize and deal with them. If the history of public employee unions is any model, formal recognition might follow naturally from the existence of vital consumer organization. But a public-service consumer union may not be in as powerful a bargaining position as a public service employee union. If employees strike, there are no services. In contrast, consumers may not be able to boycott public services (in the absence of reasonably available alternative supply) without depriving themselves of services. And government might thereby be relieved of any pressure to recognize consumer unions.

A second general problem is that it is not clear that all public services are equally suitable for consumer organization. The "consumers" of garbage collection, snow removal, street cleaning, and health care have relatively straightforward and unitary interests. Although consumers in each neighborhood may want service first, it is reasonable to expect a general interest in improved services and a willingness to meet individual needs by general improvement. Each of these services represents a visible, direct, and immediate relationship between consumer and service. If garbage is not picked up it smells; if snow is not removed, transportation stops; if the welfare check does not arrive, one starves. Seeing such failures people are relatively easy to mobilize. Public school is not such a direct service. Inadequate education is not readily visible, and most parents tend to accept professional expertise without qualification. Most important, though, education is seen by many as a competition for a limited supply of credentials necessary to get ahead in life: they may see the competition for educational outcomes as a zero sum game. If this is true,many families may not want to assert their common interests with other families at the expense of the particularized interests of their own children. In fact, they may not perceive such common interests at all. It might be naive to expect that families could be easily organized into a monolithic force to reform the schools in any particular substantive direction. As a result, creating consumer organization in education could be considerably more difficult than in other public services.

A third general problem involves the level at which the consumer organization might be established. Should it be at the regional, state, metropolitan, county, city district, or neighborhood level? The answer depends in part on the particular service in question, the extent and source of governmental support, and the identity of consumer interests required for effective organization. Certainly the location of consumer organization will shape its character. For example, if a consumer union operated at the state level it would not be in a good position to monitor the delivery of local services. But unless the consumer union included more than a neighborhood component it would not be in a strong position ot deal with policy-makers at the city, state and/or national levels.

A fourth, and perhaps most troublesome problem has to do with how a consumer union actually would participate in the processes of decision-making and service delivery. Presumably it would not go into the business of delivering services, thereby becoming an alternative supplier. But we think it should somehow monitor service delivery, receive and channel specific complaints, and collect complaints in order to press for systematic reform. While such an organization could not dictate policy to the schools, it might also be represented in some manner at policy discussions. It is also possible that (but far from clear how) a consumer union might enter into negotiations on behalf of its membership. Finally, it is conceivable that a consumer union might become a political party, running candidates for school board elections.

One way to approach these questions would be to mount a series of experiments, in which various approaches to consumer organization were tried and their effects appraised. But this strikes us as a relatively inefficient procedure. Many of the issues raised in the preceding pages probably could not be settled by an experiment, and many others are not ripe for experimentation. It seems wiser to select the more promising approaches to consumer organization and fully explore their feasibility.

At this point in our investigations, it seems likely that assistance to existing consumer organizations would be the most viable and potentially useful endeavor. Arguably, at least, this would avoid the swarm of problems which might arise from more direct support of consumer organizing efforts; and it has the potential for strengthening the capacity of consumer groups to deal effectively with schools and to represent better the interests of individual consumers. There seem to be many organizations at the local level concerned with education in one way or another: welfare groups, neighborhood organizations, Model Cities and CAP advisory groups, Title I ESEA parent councils, the occasional active PTA, and various citizen organizations. It seems reasonable to suppose that if assistance were offered for specific activities or services, the organizations might respond positively.

But this is very general. It would be important to know several things before proceding further. One is what sorts of activities and services such organizations might reasonably be expected to provide. Another is whether many of the organizations would be interested in adding to their responsibilities. A third is whether any of them had the requisite capacity -- or promise thereof -- to benefit from funds or other assistance. These queries could only be answered by studying existing consumer organizations.

In addition, even if all these questions could be answered in the affirmative, other issues would remain: on what basis should the assistance be offered -- direct government grants, a regional assistance agency, or some other mechanism? What would the order of magnitude of the assistance be? And how would the performance of organizations receiving assistance be evaluated -- what criteria would be used to distinguish successful from unsuccessful efforts?

Answering these questions, then, would require a brief field study of the organizations which might receive assistance of the sort mentioned above, and an equally brief study of alternative systems for providing the assistance.[1] The second of these efforts would follow and grow out of the first. Upon completion of these exploratory studies a report could then be made, with specific recommendations on how consumer organizations may be assisted, which types of consumer organizations would use assistance, and what specific returns are likely to accrue from such assistance.

Assuming that the field work could be confined to no more than twelve or fifteen cities, the entire exploratory study and report could be completed in five or six months. It would take the full time of one professional, modest office support services, and the critical evaluation skills of a small group of consultants for two weeks at the end. A rough schedule for the work would be:

> Three weeks to identify cities and organizations to visit.
>
> Fifteen three-day visits to cities for meeting with community organizations concerned with education.
>
> Five weeks to organize the results of the visits, write a draft report, circulate to consultants for criticism, and complete a final report.

And the budget could be roughly:

One professional, sixteen weeks, @ $18,000 per annum	6,000
plane fare for fifteen trips @ $150 per trip	2,250
perdiem for forty-five trip days @ $22 per day	990
3 consultants for two weeks, including travel	5,000
One secretary, 1/2 time for sixteen weeks @ $6,000 per annum	1,000
Total personnel	15,240
Fringe @ 10%	1,524
Total personnel	16,764
Office expenses (phone, xerox, etc.)	3,200
Total direct	19,964
Indirect costs @ 25%	4.990
TOTAL	24,954

1 OEO might consider investigation of the viability of consumer organizations in other fields. First, we have noted that education may be one of the more difficult fields in which to obtain effective consumer organization. Second, we think it is time to rethink fully how government delivers services and recognizes the interests of its consumers. If careful examination and creative thought is not forthcoming, we fear that the public sector will continue to provide more services, which will continue to deteriorate, and the consumers' interests will continue to go without recognition.

CHAPTER VI: A CHILDRENS' DEFENSE FUND

Everything thus far has been a discussion of how local agencies might improve the position of families vis-à-vis schools. This approach has two crucial limitations. First, many critical problems vary little from one school district to another. The problems students face in school exclusion are not terribly different in Los Angeles or New York; unfair assignment of children to "special" classes would not be very dissimilar in Syracuse or Seattle. Second, it is apparent that schools are not solely responsible for determining the opportunities of the child to learn and achieve in school and later life. Many other public agencies -- from welfare and hospitals to police and juvenile courts and homes -- also influence the educational and occupational attainment of children. And many of these agencies share similar problems and practices throughout the country.

These similarities among local areas across the nation suggest something in addition to a purely local approach to consumer problems in education and a concern broader than schools. Given the almost autonomous character of state and local agencies which now deal with children, and the general shortage of resources to remedy the problems identified earlier in this report, a national focus on consumer problems in education and child care could have a salutary effect. A national agency --, a Childrens' Defense Fund -- might also be useful.

What might be the focus for such an agency?

Obviously, it would concentrate on matters which have national or regional importance. There are at least three major groups of these issues.

> -- Some are school problems which have already been discussed in this report: school exclusion, discipline, student rights, and classification (tracking, special class assignment, etc.). These are matters of general concern, especially in city schools, and the problems seem to vary little from one jurisdiction to another.
>
> -- A second group of issues centers on the actions of state agencies which are directly concerned with children. These include juvenile courts, state homes for retarded children, and juvenile detention or correction facilities. The problems here range from the abrogation of childrens' constitutional rights (especially due process) to simple abuse, neglect, and inadequate care.
>
> -- Finally, there will be problems associated with the emergence of new child care programs and facilities. The most obvious of these is day care, which will generate a spate of issues related to the quality and character of child care.

These, of course, are not exhaustive. For example, the rights, of children or families to privacy, and the limits of the state's authority to extract information from or about children is an issue of considerable importance which has only begun to gain attention. But for the moment these three seem to be the principal types of problems on which a national agency might usefully focus attention. The next important question is whether there is anything such an agency might do which could not be done locally.

The answer is not completely clear, but our work thus far suggests that there probably are several areas of useful work.

The first area would be assisting or initiating legislative reform in those areas subject to political action, and test litigation in those areas amenable to judicial resolution. Legislation and litigation may often occur in any event, but assistance and concentrated expertise may help improve worthy legal actions and legislative programs, and avoid unwise ones.

A second benefit of a national agency would be to give some of the problems -- and perhaps their solutions -- national attention by way of research reports, muckraking, public education campaigns, and the like. Activity of this sort is often useful in focusing attention on an issue, promoting local action where it might otherwise not occur, and creating a level of public understanding which might not otherwise exist.

A third important area of work would be to provide some common focus for activities of existing organizations already concerned with one or another of the problems mentioned earlier. Our investigations suggest that there are at least two dozen national special-interest organizations concerned with children in one way or another; their concerns range from a narrow interest like training retarded children, to a broad interest like preventing racial discrimination against black children. While none is concerned with all the issues outlined above, each is exercised about at least one. Those we have thus far consulted have expressed an interest both in assistance -- especially with litigation and research -- and in some cooperative efforts.

While these three types of work are surely worthy fields of endeavor, not everything about them is clear. Cooperation and coordination are the oldest saws in the life of public and quasi-public agencies: before proposing a Childrens' Defense Fund, we would want some hard evidence that cooperation would in fact be forthcoming, that there was a reasonable chance of its being productive, and that it wouldn't happen without a new agency. Answering these questions would require some fairly close investigation of what existing agencies are doing, what the future directions of their programs are likely to be, and what concretely they expect from a new organization.

There are other critical questions. A good deal more work would be required to decide which of the many issues suggested ought to have high priority, to figure out which ought to be dealt with by way of legislation and which by way of litigation, and to decide what the substance of these efforts ought to be and what remedies would be in order.

There are two other issues which should be considered before making any decision to organize a Childrens' Defense Fund: one has to do with the character of the organization, and the other with the character of its finances. The question on the first point is whether such an agency ought to remain essentially a national research-education-litigation agency, or whether it should attempt to coordinate and develop state and local efforts along similar programmatic lines. The chief argument for state and local development is that it would promote more effective follow-up (and therefore success) at the local level; the chief argument against it is the time and expense involved. Deciding this point would involve some discussion with organizations engaged in such activity, much investigation of potential interest among existing state and local groups, and some rumination on the results.

The initial finance issue, of course, would be to figure out how much the program of a Childrens' Defense Fund would cost. Once some of the earlier questions about program had been answered, this would be relatively simple. The more important finance issue, however, is from what sources money should come. All the funds for such an organization probably could not be private, but it isn't clear how much of the money should be public or for what sorts of things public money should be used. Nor is it clear whether an effort should be made to enlist individual members and whether some services should carry a charge (and if so, which ones, and how would the fee be determined?). These are not issues which can be resolved easily, but the alternatives should be spelled out and the likely consequences of different courses of action clarified.

We believe that a Childrens' Defense Fund would serve a useful purpose, and that it could be established with a suitable program, financial base, and relationships to existing organizations. But there is enough uncertainty on several specific issues identified above that more exploratory work is required. What is in order, we think, is the time of one lawyer and one social scientist to deal with the issues raised here: their assignment should be to answer the questions set out, draft either a proposal for such an agency or a report explaining why it shouldn't be created and have their work closely scrutinized by a small group of client, service, and professional persons. This could be done in three months, and the costs would be roughly as follows:

Two professionals, three months, @ $20,000 per year each	10,000
Secretary, 1/2 time for three months, @ $6,000 per year	750
	10,750
Fringe @ 10%	1,075
Total	11,825
Travel: 12 trips, @ $150 per trip	1,800
Perdiem, 24 days @ $22 per day	528
Critical review and consultation by 5 persons for one week (@ $150/day), including travel and expenses (@ $250/person).	5,000
Total direct costs	19,153
Indirect costs @ 25%	4,788
Total costs	23,941

Appendix A: REGULATORY AGENCIES

I. Rationale

Historically, when seeking to protect consumers' rights in the face of monopolistic or quasi-monopolistic institutions, federal and state governments have established independent regulatory agencies. Thus was born, for example, the Interstate Commerce Commission (1887), the Federal Trade Commission (1914), the Securities and Exchange Commission (1934) the Federal Communications Commission, the Food and Drug Administration and their state counterparts in fields like banking, insurance, utilities, liquor, and professional licensing. This suggests a similar approach for education. If we view the public school system as a monopoly supplier of services to its primary consumer, the family, then we might want to set up a countervailing bureaucracy to protect the consumer from inadequate service by that monopoly. Since providing each child with an adequate education is particularly the state's duty, however, the job of correcting the failures of the public schools should be the state's burden.

Can such an approach work? After a brief description of strengths and weaknesses of administrative agencies we shall look at experience with existing agencies, both educational and non-educational. This leads to a fuller analysis of the problems and dangers in setting up any such agency and our conclusion that such an approach is unlikely to protect education consumers.

II. Strengths and Weaknesses

The general advantages of an administrative agency, in theory at least, are its coherence and its flexibility. It has broad discretion to investigate, to prosecute, or to judge, and sometimes to combine all three functions. By centralizing regulatory activities in one body, an agency can develop a cohesive overview of the problem, rather than a case-by-case anecdotal grasp. In dealing with a problem in one school, for example, an agency could investigate that school or school system in depth, or might instead compare that school to other school systems. An agency need not be bound by restrictive court procedures. It need not follow court-imposed rules of evidence, requirements of standing, ripeness, or justiciability. An agency need not rely on the proper plaintiff bringing the proper suit at the proper time; it need not rely on plaintiffs to remain in a case, i.e., on the capacity of the litigants to avoid being bought off by an attractive settlement offer. In sum, an agency can choose its own time and place of battle.

An agency can serve a variety of functions. It can be informative, advisory, or enforcing. It can engage in research leading to studies, reports, guidelines, rules, or broad policy declarations. These rules and reports can be distributed to the public (informative function) or to public officials (advisory function). An agency can enforce its rules either through judicial procedures or through its own hearings. Its enforcement activities can be either remedial or preventive in scope. An agency is not limited, as courts are, to providing cures.

Another important advantage of an agency over a court is its ability to supervise and regulate a continuing process. Considering the large amounts of time and effort courts have had to spend to oversee, for example, the school desegregation process, a court may understandably be reluctant to intervene in other long-term school processes. A regulatory agency, however, not limited to discrete "cases and controversies," may more easily engage in continuing intervention.[1]

Politically, an "independent" agency can be relatively insulated from partisan political pressure, at least when compared to the executive and legislature. Insulation from the political process, however, has led to other problems. "Independence from political pressures" has often been merely a euphemism for the lack of a strong public constituency. Freedom from public or legislative control has meant that agencies are generally not accountable or responsive to the public. Instead, there is a high probability that an agency will be captured by the group it is designed to regulate and will come to represent the interests of that group. Seeing itself as the promotor of that group -- e.g., the FTC promotes manufacture and trade, the FDA promotes and protects food producers, the AEC promotes nuclear energy, and state boards of education and accreditation agencies protect school professionals -- the agency will generally legitimize action already taken by the producer, rather than subject it to review and regulation. The reasons for this identification of interests between regulator and regulated are predictable and perhaps inevitable. There is little or no organized consumer resistance to offset the strong political pressure from the organized interest being regulated. Within the agency, career patterns overlap with the regulated industry -- educational and social backgrounds coincide and job mobility between them is high. Not infrequently, initial employment by the regulatory agency is seen as merely a steppingstone to a higher level job within the regulated industry. Personal friendships, then, will supplement a concurrence of values between regulator and regulated.

Other problems common to any bureaucratic institution have proliferated in regulatory agencies: weak leadership, internal division, personnel problems caused by the seniority system, and long enforcement delays caused by red-tape and the failure to utilize streamlined procedures. Too often an agency, acting like a court, relies exclusively on actual cases or controversies to initiate any action -- in part because fact gathering is difficult without a narrowly focused case, in part out of inertia. Similarly, the advantage an administrative agency has over a court in monitoring a continuing activity is exaggerated: an agency faces great difficulty when it tries to regulate from the outside an activity that involves many different individuals and a variety of methods. Agencies enforcing standards can operate effectively only in areas in which reasonably clear guidelines and standards exist or can be developed. A final problem attaches to the combination of functions, the very broad discretion within an agency. Wearing promotional, prosecutorial, and judicial hats often leads to serious conflict-of-interest problems both for individuals within an agency and for the agency as an institution.[2]

III. Experience with Existing Agencies

A. Education Agencies

At the federal level, there are essentailly no monitoring or enforcing agencies from which we can draw support. The United State Office of Education makes little pretense of enforcing school standards. To the extent it forms policy guidelines it is responsive mainly to the public school system, and thereby to its professional educators. But in essence the federal government plays a very little role in creating or enforcing educational standards, even to the point of delegating control over federal-aid programs to state and local educational groups. Even when there is an opportunity to create an active and independent watch-dog -- parent advisory councils mandated under Title I -- OE has often sided with the local school officials to keep their turf free of "outside" parental inspection and power.[3]

On the state level important policy is more often made but just as often not enforced.[4] In addition to legislative staff and committee work, state boards and departments of education have roles with varying degrees of power. But as a recent study of state-level educational governance in twelve of our most populous states summarized the situation:

> On the elementary-secondary level, our small sample includes states with various basic structures -- indeed, there are almost as many basic structures as states. Thus we have described states with elective boards and appointive superintendents (Ohio), appointive boards and elective superintendents (California), elective superintendent and no board (Illinois), ex officio board with elective superintendent (Florida), both board and superintendent appointive, etc. These structures have often been built in a piecemeal way and in response to particular cultural and political pressures. Generally speaking, they seem to represent different ways of seeking some common objectives, especially the isolation of education from the broader arena of politics, the relief of legislatures and executives from education responsibility, and the reinforcement and preservation of the influence of the profession in control of the education system. Almost without exception these structures are clumsy, cumbersome, and lacking in administrative coordination with the rest of the state government.
>
> With few exceptions, the state departments and boards of education have been closely linked with the organized education profession and its allies. It is not unusual in American government, of course, for agencies to be highly dependent on the political support and guidance of the private groups whose interests they regulate or promote. Indeed, this kind of relationship is quite typical. In education it is sometimes accomplished through formal requirements on the qualifications of those appointed to superintendencies or boards. More often, it is the outgrowth of less formal situations. Superintendents, whether elected or appointed, almost always come from the ranks of the profession and often are, in effect, nominated by it. They, in turn, have the equipment to assume leadership over the board -- the time, staff, professional status, and expertise to undertake the agenda-making and information-supplying functions that count so heavily in governmental decision-making today.

Incumbent educational decision-makers at the state level have acquired their positions through the present professional-hierarchical promotion system and are not inclined to be critical of the status quo. State education agencies (SEA's) generally seek to avoid or suppress political disputes and to build an image of non-partisan administration of professional educational programs and standards. Where this facade has been shattered, as in recent California educational controversies, the result has usually been that the SEA has lost rather than gained power. Yet the professional dominance of the SEA (and other regulatory agencies) may be inevitable if it is to have any power. Where an education board has consisted of lay people, the result has usually been control by a superintendent of schools (the educational expert), with outside pressures coming primarily from organized groups of teachers and administrators.

Issues dealt with by state education boards have reflected this professional dominance. They tend to center on matters of school finance, accreditation, broad standards on curricula and textbooks and legislative recommendations. Many state boards are intended to have large research, evaluation, and planning functions, but, in fact, these activities have low priority.

Control of SEA's by education "producers" makes it unlikely for these agencies to play an effective consumer protection role. In considering any restructuring, we run into the basic problem already mentioned in the discussion of lay control of the agency. If members of a state board come from teaching and administrative ranks, they will not be representing the "consumer interest." But if a state board is staffed with non-expert consumer representatives, the board is likely to have little power because it will be dominated by a professional superintendent and his "expertise." Moreover, the various professional boards and agencies which now exist to regulate elementary and secondary education, higher education and a variety of special programs have a poor record of coordination. Adding yet another agency would only aggravate the problem. One approach -- a system of interlocking directorates whereby a member of one board sits as an _ex officio_ member on any related board -- might alleviate the problem at the price of reasserting professional (producer) dominance over the consumer agency. So we have gone full circle. We return to this dilemma again and again.

The other important state educational "agencies" are the professional organizations such as the state branches of the NEA and AFT. As Usdan describes it:[6]

> Over the past few decades a common pattern has taken shape in the politics of education in many jurisdictions. Its bases have been the professionalization of the public schools and the universality of free public education. Through these trends teaching and auxiliary services have come to be regarded as esoteric -- fit to be run only by people with special qualifications. The entire society has been made dependent on the activities of the people within the field. Thus, teacher training and certification and specialized training for administrators and other professionals were established some time ago as gateways to employment in education. These steps promoted a sense of common bond among the practitioners creating a basis for the development of strong professional groups, many of which united people from the variety of specialties that serve elementary and secondary schools, including the classroom teachers.

> The sense of professionalism in education prompted these people and their organizations to behave according to the models supplied by other professional groups in society. They employed rhetoric that emphasized their service to the public. The creation of this image doubtless enhanced the standing of education with other elements in the society and facilitated the creation of alliances with a variety of interests. Education has thus come to be a socially recognized and respected profession with a good deal of influence over the conduct of its function.
>
> Politically, this has meant that these forces have had a major voice in the resolution of educational problems. By sheer numbers, the classroom teachers, through their organizations, have tended to dominate the scene. They have formed firm alliances with groups of administrators and specialists and often with school board associations. The high social value placed on education and the very wide spread of educational interests through the society have enhanced the power of the profession and brought it into a close relationship with lay groups, including, but not limited to, those specifically education-oriented. In state after state an education coalition has formed, sometimes even loosely organized around a periodic conference or the like. These coalitions, built around the teachers' associations, have been critical elements in the politics of education in most states. And in most, their interests have been confined almost entirely to elementary and secondary school affairs.

The absence of similar consumer organizations has made it even more difficult for an SEA, even if so inclined, to represent consumers, effectively.

The final example of an existing "educational agency" is, of course, the local or regional board of education. Here the problem of lay board members dominated by professional staff recurs constantly. Local board members usually have full-time non-educational occupations and are not ordinarily paid for their services on the board. The two or three days a month which they contribute cannot begin to give them parity of "expertise" with the superintendent and his professional staff. Not surprisingly in terms of ordinary low-level politicking, boards are much more responsive to continuing pressure from organized professional groups (e.g., teachers and principals) than to short-lived pressure from issue-oriented ad-hoc groups, which has been the best that consumer groups have mustered.

A final problem lies in the meaning of representation. A school board in a small, relatively homogeneous community may at least partly represent families, whether or not it effectively promotes their interests. In a heterogeneous urban school district, however, representation of some consumer groups, particularly racial and economic minorities, may be illusory.[7]

B. Other Regulatory Agencies

The main examples of non-educational regulatory agencies are the multitude of federal and state regulatory commissions established to regulate quasi-public monopolies (e.g., telephone, electronic broadcasting, and atomic energy) and parts of the private sector (trade, power, securities, railroads, food). Consumer protection is only a small part of the mission of these agencies. They are intended to mediate various competing interests, which include corporate competitors of the regulated activity, corporate consumers of the regulated goods or services, and the government qua government, as well as the "public interest." In general, however, these commissions like education agencies, have served largely as promotors, protectors, and apologists for the regulated industry.

Why does this happen? A well-documented example is the Federal Trade Commission (FTC).[8] The Nader Report concludes that the problem pervades all levels -- failures of detection, failures to establish enforcement priorities, failures to enforce, and failures to seek needed statutory authority. Most effort and expense is devoted to investigations and cease and desist orders, which are often ineffectual. There is relatively little concern for the consumer protection division, intended to regulate retail fraud and advertising. Delay infests every action. Total numbers of complaints and suits have declined precipitously with no noticeable improvement in quality. An effective action can at most prevent future abuses; therefore, complaining consumers can gain nothing more than spiritual gratification, even from the most effective "cease and desist" order.

Behind these failures is the basic convergence of interests of the FTC "enforcers" and the industry. The political and economic power possessed by the regulated industries (whether within the jurisdiction of the FTC or of another regulatory commission) is vast. In sharp contrast stands the meager resources and few spokesmen for consumer interests. This means that the incentives acting on an individual commissioner are one-sided. If he wants to retain his job, he will seek to placate the powerful economic interests that have disproportionate power in Congress -- precisely those he is supposed to regulate. If he does not want to make the FTC his permanent career, his most likely future employment lies with a private law firm specializing in defending and counselling the interests he was once regulating, or with one of the regulated corporations. As one of the members of the ABA report describes the situation:

> A commissioner concerned with his future success at the Bar will have no greater incentive to promote the consumer interest fearlessly and impartially than one whose guiding principles are job retention and agency aggrandizement. He will receive no bonus upon entry (or reentry) into private practice for the vigorous championing of the consumer interests. The gratitude of consumers -- indulging the improbable assumption that such a thing exists -- cannot be translated into a larger practice. On the other hand, the enmity of the organized economic interests, the trade associations and trade unions, that a zealous pursuit of consumer interests would engender may do him some harm, while making his tenure with the Commission more tense and demanding than would otherwise be the case. Exceptional people may rise to the challenge but they are unlikely ever to constitute a sizeable fraction of commissioners.[9]

The similarity of backgrounds, values, and status of members of regulatory commissions, particularly lawyers, and those ostensibly being regulated, is also important. Whether this is the cause or the effect of the traditional closeness between law school programs and corporate law, that closeness makes it much more likely that an FTC lawyer will be "compatible" with a corporate executive than with a mere consumer.

On the consumer side of the equation, the basic liability is the lack of an organized constituency. As an "independent" agency, the FTC is influenced by the same forces that are strongest in Congress -- corporate power. Without a countervailing "consumer lobby," the FTC needs Presidential support to succeed in enforcing any controversial policy that bucks industry pressure. In a way, the very "political independence" of the Commission renders it impotent without outside political support.

The rest of the regulatory agency landscape looks similar. For example, the FDA sees itself as the protector of the food industry rather than of the consumer. There is harmony and cooperation between utilities commissions and the utilities, though in this case the existence of a narrowly focused question -- "Will the rate be allowed to rise?" -- may slightly increase the chance of public pressure. The Atomic Energy Commission in its dual promotor-regulator role presents a new problem -- technical expertise. In a situation where expertise in nuclear reactor technology is the near-exclusive province of the "nuclear industry," can even the best-organized consumer group find its own "expert" to give countervailing testimony? Recent years have seen dissident AEC scientists begin to speak out against AEC policies, sometimes with consequent loss in their research staff and funds. And the plight of state regulatory agencies is even worse. With neither the resources nor the prestige of their federal counterparts, the state regulatory agencies have been even less effective in protecting the consumers' interests.[10]

IV. Overall Problems

We now must consider the prospects for regulatory agencies as they might particularly apply to new educational agencies. We have seen that existing state and local educational boards and departments are either made up of educational professionals or else fall under the control of superintendents. Is there any reason to expect that this conundrum can be overcome to enable either existing or new agencies to be effective protectors of the consumer interest? That is, are existing boards inevitably producer-oriented, and will any proposed regulatory agency inevitably come to look like a board of education? If so, adding another educational bureaucracy will be counter-productive.

The main problem of educational staffing has been that professional educators (teachers and administrators) generally share common background, training and values. Staffing a regulatory agency with professional people, whether or not they are educators, will create a similar situation. Various professional people have congruent backgrounds -- similar schools, homes, socio-economic status -- and have analogous life-styles -- the same social sets and professional organizations. These factors in turn lead to a set of shared values, in particular the conception of the professional as the knowedgeable expert dispensing services among clients who begin in the dark and are kept there by the professions.

The influence of job mobility will make it less likely for such a board to protect consumers effectively. Job mobility from such an agency into the educational superstructure will exist, whether or not educators are initially recruited for the agency. The reason for this is that the skills gained from serving on the agency will be valuable to any school or system being regulated by the agency. On the other hand, there is no consumer-oriented group that could employ a person with those skills. And, of course, job mobility between agency and school system will be harmful to consumer interests only insofar as the agency plays an important regulatory role. That is, only if the agency is a significant force in educational policy-making and/or regulation and monitoring will the skills acquired by serving in the agency be a significant asset to a school system. Thus, we are damned if we do and damned if we don't: either the agency is weak and ineffectual, or else it becomes a producer-protector through the convergence of agency and educator outlooks.

Any escape from this impasse requires that a large component of any agency must come from and return to consumer constituencies, and particularly those consumer groups we most want to help -- i.e., racial and economic minorities. There are two serious and fundamental problems involved here: legitimacy and effectiveness.

The problem of legitimacy reflects the underlying situation. Basically, there is no organized consumer interest in the area of schooling. How, then, do we find representatives of the "consumer constituency" and endow them with enough legitimacy to countervail the political pressures and constraints presented by organized groups of teachers and administrators? The answer is unclear. But, suppose that a consumer-oriented regulatory agency could be established. Could it be effective?

The first problem is its relation to the educational establishment, both in terms of organizational chart and personnel background. The closer the agency is to the educational professionals, the easier it may be for it to work efficiently and have influence. As it gets closer, however, it loses its ability to be an independent and countervailing force. Therefore, we reach an inevitable trade-off between efficiency and effectiveness.

One way around this dilemma might be to narrow the discretion allowed to such an agency, for example, to make requirements for information dissemination or enforcement activities binding by law. Yet the more we restrict the legal discretion allowed to an agency, the less important it is that we staff such an agency with strong consumer representation. Outside individuals, whether consumers or not, could enforce whatever legal requirements remain, through the legal system. If we push this to its logical extreme, we might just as well impose all requirements by law on the existing state and local education agencies, the boards of education. After all, existing boards have the most direct access to information and enforcement power. But this system would break down for two reasons: first, it is difficult, and in many instances undesirable, to objectify decision-making and eliminate discretion; and second, many problems occur precisely because boards of education do not obey the law as it currently exists.

Finally, we return to the ultimate dilemma: to set up a regulatory agency to assist disenfranchised consumers requires strong political pressure by those same consumers to counter organized pressure from teachers, administrators, and those parts of the public which automatically oppose change or increased cost in the educational system. Together, this variety of factors compels us to be pessimistic about any new regulatory agency.

V. What Could a New Agency Do?

Let us now look at possible benefits, first in terms of the theoretical scope of an agency, and then in terms of more specific proposals. What is needed and possible is not another regulatory agency, but some way to monitor existing school policies more closely and to respond more creatively to consumer grievances.[11]

Looking first at the broad policy involving matters of pedagogy, finance, attendance, and so on, is a regulatory approach appropriate? Most of these problems are political or quasi-political in nature. Their resolution will inevitably reflect the conflicts between different educational interests. The addition of a new regulatory agency is not likely to upset the balance of powers and pressures that converge on the debate. If it threatens such an upset, the agency itself will become buffeted by those same pressures. Thus, these problems are political, not administrative, and will be resolved, whether we like it or not, by political processes.

We might restrict agency "regulation" to implementing (or monitoring) already-existing policies. Let the political processes work out acceptable standards but have a regulatory agency supervise the administration of the standards (rather than their formation.) Yet even if we envision an agency that will protect the consumer interest in such a limited process, we must expect heavy use of political lobbying and the courts by the school, who can afford it, to protect its own vision of public schooling. Similar assistance must be made available to consumers.[12]

When we turn to consideration of individual cases -- tracking, expulsion, and due process rights within a school -- matters do not improve. A statewide regulatory agency is not likely to be cost-effective in monitoring these activities. What is needed is a local mechanism to investigate complaints and initiate enforcement actions where appropriate. An ombudsman or administrative critic, or perhaps a student advocate, could best perform this function. Most time and effort will be spent investigating (consulting with students, teachers, and school officials, and "enforcing"), trying to settle the disputes on the local level. The logic of this points to a local agency or individual within a system, yet independent of the local school officials.[13]

A final possibility is an inspection agency. Such an agency could collect information rather than merely channel it. Through visits to schools and classes, and through investigation of complaints, it could dig out needed information. It could use this information either to settle individual disputes or to perform general licensing or policy recommendation functions. These purposes, however, will be better served by enlarging the mandate and resources of the local complaint manager, rather than creating a new agency.[14]

VI. Conclusion.

In summary, then, we do not expect that any new "independent" regulatory agency which is created to protect educational consumers is likely to be effective. The functions it could perform are limited and are likely to be performed better by revising the present system of school administration and legal redress. In the absence of an organized and vocal consumer constituency, we reject OEO experimentation with independent regulatory agencies.

Footnotes to Appendix

1 On the other hand, it may be questioned whether the Department of Health, Education, and Welfare has been any more successful in effectuating or implementing school desegregation guidelines than have courts with the aid of private litigants or the U.S. Department of Justice.

2 For discussions of these difficulties, see e.g., Fesler, The Independence of State Regulatory Agencies (1942), (hereafter, State Regulatory Agencies); "Pollutors Sit on Anti-Pollution Boards," New York Times, December 7, 1970, (hereafter, Pollution Boards); Cox, et al, The Nader Report on the Federal Trade Commission (1969), (hereafter, Nader Report); Report of the ABA Commission to Study the Federal Trade Commission (1969), (hereafter, Report of the ABA).

3 So feeble has been either the effort or the effectiveness of federal education agencies in setting and enforcing policy that they want to give federal aid without any strings attached. Compare, Title I of ESEA: Is It Helping Poor Children? (1969); Unkept Promises to the Children of the Poor (1971); Murphy, "Bureaucratic Politics and Poverty Politics," 6 Inequality in Education 9 (1971); and Kirp and Yudof, "Revenue Sharing - Hidden Agenda" (Unpublished Manuscript, 1971).

4 See, e.g., Unkept Promises to the Children of the Poor (1971); Study of the Massachusetts Racial Imbalance Act (1971).

5 Usdan, Michael D., Minar, David W., Hurwitz, Jr., Emanuel, Education and State Politics, Teachers College Press, Columbia University, New York, 1969, pp. 170-1. The same relationships exist in the quasi-public accreditation agencies. See FN 7 infra.

6 Ibid., pp. 167-8.

7 See Carrington, "Administrative Regulation of Public Schools" (1971) (paper written upon request for the Center for the Study of Public Policy) for a general discussion of administrative regulation of education of federal state and local agencies. We have excluded the regional accreditation agencies from this discussion because their "professional" makeup, bias, deeds and support are clear. Consider, for example, the following excerpts from trial testimony in Marjory Webster Junior College v. Middle States Association of Colleges and Secondary Schools, 302 F. Supp. 459 (D.D.C. 1970), rev'd 432 F.2d 650 (D.C. Cir. 1971).

8 See, e.g., studies cited in FN 2 supra: Nader Report and Report of the ABA.

9 ABA Report, Separate Statement of Richard A. Posner, pp. 116-117.

10 See State Regulatory Agencies; Pollution Boards.

11 See Carrington, Administrative Regulation of Public Schools.

12 Our proposal for an Education Attorney (see Chapter 3 supra) is an attempt to provide such assistance. We recognize, of course, the continuing the consumer's awareness of his stake in schooling: the Education Attorney's mandate extends to such "assistance."

13 Our proposals for an "Administrative Critic (See Chapter 2 supra) is designed to permit schools to respond to individual grievances; in addition the Office of Administrative Critic will have the authority and resources to undertake a broader monitoring of school policy. We also note a new development which should be watched by OEO but, in our view does not now deserve experimentation.

14 See Appendix ____ for a general discussion of information approaches. In our view either the Administrative Critic or the Education Attorney is in a superior position relative to a new independent "inspection agency" to protect consumer interests in schooling.

Appendix B: CONSUMER PROTECTION THROUGH INFORMATION

Consumer protection is an effort, in part, to promote checks and balances in the educational system by providing consumers with more information about schools. Schoolmen now claim to act in the interests of children; they claim to be professionals and claim to know how to educate children. Consequently, the argument goes, consumers need to know only minimally how well schools are performing. Yet it is clear that the education professionals do not always act in the interests of children (and their parents). In any event, no professional has the right to make decisions for uninformed clients; rather he has the duty to inform his clients and carry out their decisions.

Moreover, public education is a public service delivered by an unregulated public monopoly. Short of changing brands -- moving to another school district or enrolling in a private school -- consumers have no choice about the educational services in their area. Public concerns -- such as the quality, efficiency and humanity of the services -- seem only of secondary concern to schoolmen and politicians. Especially in schools serving the poor, teachers and administrators seem most concerned with preserving their power and self-image. Much of their power and prestige rests on information about schools -- information about their successes and failures. But schoolmen virtually control the collection, analysis, dissemination and publication of information about schools. This situation need not prevail. What would happen to schools if information about schools was openly and freely disseminated? Could information about schools be used to protect consumers? Could mechanisms or guidelines be devised to protect consumers' interests merely by utilizing information presently available to schoolmen?

Government can monitor the nation's pulse and prescribe remedies on the basis of information. Modern technology has expanded man's capacity to collect, store, and retrieve information. Increased knowledge about a situation ideally results in 'promoting the general welfare'; information is the medium of communication. In theory, disseminating extensive information about schools in particular school districts would be one strategy of consumer protection. But, if consumers knew more about their schools, would they seek, and be able to get, better educational services?

We are pessimistic about the viability of consumer assistance strategies which rely solely on the collection and dissemination of information: increasing the supply of information to consumers of educational services does not directly lead the consumers to demand better services. Rather the problem is more complex. Consumers might get information about education through any number of mechanisms. But they will probably not make use of their increased knowledge without other forms of assistance. Without standards and controls, they will not even get the relevant facts and figures they need to substantiate their views. The problem is exacerbated in poor communities: consumers with low levels of education have greater difficulty understanding the implications of detailed administrative information.

In short, information alone is not power. Nor would merely providing consumers with more information about schools rectify the imbalance of power that presently exists. Any number of political and administrative devices -- consumer interest groups, sympathetic administrative agencies, or consumer advocates -- may be necessary if consumers are to use information; but these protection efforts need information to understand what should be protected, and how. In effect each proposal we make must have an 'information component' and seek to translate information into political or administrative actions. Thus an information strategy is but a part, albeit an important part, of an overall approach to consumer protection.

1) Information: The Discretion of Authority

Without much question, information plays a critical role in the structure of authority relationships within schools. Educators, in part, maintain their power, authority and legitimacy by virtue of their control of information. Schoolmen claim that because of their expertise, only they can understand the processes of education. Only they are competent to exercise the judgment, and make the decisions necessary for administering a school system. Students -- not teachers or administrators -- are judged and evaluated. Consequently parents know only what schoolmen feel they should, and educators have few incentives to keep their clients fairly and objectively informed.

In her book How to Change the Schools, Ellen Lurie provides a vivid example of the dilemma in authority and the excesses of bureaucratic power in New York City.

> . . . [A] group of parents get together and want to know more about reading scores. They might first ask their children's teacher 'What is the average reading score of this class? How many of the children are reading below grade level? Now, the teacher has that information at her fingertips. But she invariably gives the parents the run-around: 'Our principal feels that reading scores should not be discussed with you -- it is a technical and complicated subject.' Immediately the parents have been put in their place. This is a professional topic, they are really being told.
>
> If the parents persist and obtain an appointment with the principal, he will try to give them vague answers, generously laced with multisyllabic educational jargon.[1]

In the absence of information about how schools and schoolmen are performing, parents are forced to rely on their own resources -- usually their own subjective experience, common sense and sense of propriety. When confronting an entrenched bureaucracy, this is rarely sufficient.

Schools are not unique in concealing information from clients. Donald N. Michael points out the significant role that information has on administration and bureaucracy.

> Opening up the information base of political decision-making would be one of the most painful wrenches conceivable for conventional styles of governing. Those not involved who have devised over their political lifetimes elaborate strategies for maintaining operational power and complementary personal self-image would find themselves naked, having to armor themselves anew and in new ways.[2]

Conceivably, if consumers were informed, if consumers had access to the 'information base' of educational decision making, the knowledgeable consumer would be able to protect his own interests. If consumers were informed, they would be able to question -- and challenge -- educators' actions.

Why are educators loath to release information about schools? In part they are merely seeking to preserve their administrative powers -- their ability to act and influence decisions. Bureaucratic power depends on the control of information and its selective release to clients at the appropriate moment. By controlling the collection and dissemination of information, schoolmen are merely trying to limit the abilities of their constituency to judge their actions.

From another perspective, however, educators are also reinforcing their conception of a professional relationship. By defininition, a professional -- either a doctor, lawyer or teacher -- has mastery over a 'body of information'. Regulated by state licensing procedures and guided by professional codes of ethics, professionals apply their specialized knowledge on behalf of individuals and groups in society. Specialized knowledge is the basis of professional authority.

As a profession, however, education is relatively ill-defined. Unlike doctors or lawyers, "teachers and [education] administrators have been engaged in a long and wistful, and sometimes desperate, search for professional status."[3] To justify their status, educators have had to argue "that there was in fact a body of essential professional knowledge that they -- not laymen, and not academicians -- possessed."[4] In turn this knowledge -- and the accompanying certification -- provides a "protective shield" to teachers and administrators and serves as a basis of authority in dealings with parents or other laymen.[5]

This desire by teachers for "professional" status may explain why educators hoard information about schools, but it does not justify that control. It is true that dissemination of specialized information to clients may result in a decline of professional "aura" and authority. But if this results in educational benefits for children, then it is to be preferred. Saying it another way, if we are in a zero-sum game situation with gains for students available only at the expense of teachers, then we opt for those gains.[6]

2) The Impact of Consumer Rights to Information

The collection and dissemination of information about the quality of educational services, in the final analysis, depends on the allocation of power within schools. "Information is power," James S. Coleman has written, "and access to information . . . affects the power of various parties to the educational process."[7] Consumers need access to many forms of administrative information. This can give them the power -- exercised through other consumer protection mechanisms -- to exert their legitimate prerogatives.

A second issue is implicit in any discussion of the consumers' 'right to know'. Schools maintain information about a wide variety of categories. One of the most important categories is personal pupil records. In many school systems, parents are denied access to their own children's school records. Parents need to know the schools' assessments of their individual children. (And when they are old enough, children need to know the school system's assessments of their own capabilities.) In addition to inspection of records, consumers need to be able to correct or challenge information as they see fit.

Nevertheless, the consumers' 'right to know' facts about school performance and the content of personal pupil records is only part of the general issue of information. Consumers also have the 'right to privacy'.[8] Government and private enterprise now possess the capacity to collect, store and rapidly retrieve information. Computor technology gives bureaucracies the ability to "record faithfully, to maintain permanently, and to retrieve promptly and to communicate both widely and instantly . . . any act or event or data" it chooses.[9] Furthermore, "technology can now transform what participants believe were private experiences into public events."[10]

Among municipal government agencies, education bureaucracies have been in the vanguard of computerizing their records; they have also been most lax in preserving the privacy of their clients. A recent national survey of computing activites in secondary schools finds that more than 30 percent of all schools use computers for some administrative purposes and that "computerization of school records will undoubtedly become well nigh universal in the 1970's."[11] No safeguards or groundrules have been adopted by schools for the collection and dissemination of this information. The records may be improperly used, or may be inaccurate, incomplete or misleading. Thus the danger is great that computerized information can be prejudicial to pupils' future lives.

Much information about students is gathered as a result of confidential relationships. Teachers teach pupils and guidance conselors interview them. Information gathered through these encounters is not supposed to be widely disseminated. But schools make little effort to preserve this confidentiality. And the problem of privacy is exacerbated by computerized information retrieval procedures which make any data, once collected, easily accessible.

If consumers actually had the 'right to know' information about their schools and had the right to privacy about personal information, would they be in a better position to protect their own interests? We believe that they would be. Depending on the nature of their grievances and their goals, consumers might utilize 'more information about schools' in three distinct ways.

First, information could be the medium of communication between consumers and schools. Information about consumer interests and opinion could have an impact on school personnel. Candid facts from administrators about school accomplishments and problems could keep parents informed about their children's problems and successes. If consumers understood the problems schools were facing, they would be more co-operative. For example, they might campaign for school bond issues and support administrators in controversial situations. If administrators understood consumer problems, they might provide better services. No matter how sensitive, information could be exchanged in an atmosphere of trust and confidence. Ideally administrators would not protect their interests by withholding information from consumers. Nor would consumers do likewise. Information would be used to reduce conflict and promote understanding between consumers and their schools.

Second, information could be used to raise disputes. As a result of new information consumers could find grievances and could articulate their grievances better. If they knew what was happening in their school system -- or to their children in individual classrooms -- they could judge better how to respond to apparent challenges and impediments. Administrators then might be extremely guarded in the information they released to consumers. Consumers might be similarly guarded in their communications with administrators. When consumers became dissatisfied their grievances could lead to disputes. Information would be largely a catalyst for action.

Third, information could be used by consumers to clarify their situation and to give them ammunition to further their cause. Information could be used to prove or disprove consumer contentions. Initially, consumers would have to have some sense of their demands on the educational system. Then access to information would give consumers power in a dispute. Denying them access would be denying them authoritative sources from which to argue. Those in power -- administrators, political leaders or even the public in a truly participatory democracy -- would decide how information would be distributed. These 'rules' of information in effect would determine how power is distributed, and how much impact information would have in a dispute.

In other words, the potential consumer demand for information does not depend on what the school system supplies. Rather, consumers can use information after they have disputes and grievances. Here information alone does not lead to dissatisfaction with education.

3) Survey Research Conclusions: Does Information Make a Difference?[12]

These hypotheses are substantiated by inferences from survey research findings. In all of the studies consulted, consumers imply that they would like to know more about their schools. Simultaneously, the majority of consumers are satisfied with their schools.

Analyzing the results of recent survey research studies about schools presents a number of problems. Sample size and sample populations vary considerably. Some studies represent a national, cross-sectional population (Gallup, 1969; Gallup, 1970, Carter; Carter, Greenberg and Haimson; Carter and Chaffee; Jennings). Some focus on communities of particular size or other characteristics (Wilder et al.; Friedman; Koerner Commission). Others focus on problems of individual communities (Cloward and Jones; Cronin and Hailer; Gottfried). The quality of the data -- response rates, questions asked, and survey techniques -- varies considerably. Thus comparisons between individual findings are, at best, tentative.

Of significance is not the magnitude (percentages) of individual findings, nor the differences in magnitude between findings. These comparative aspects largely can be explained by differences in population size and sampling techniques. Rather the directions of the findings, where similar, are significant.

(Gallup (1970) reports that 62% of public school parents would like to know 'more' about the public schools in their communities. Individuals with 'higher' incomes and 'higher' levels of educational attainment are least likely to want to know more about schools.

This finding seems surprising. One expects that people with higher incomes and higher levels of educational attainment -- and consequently higher social status -- would be most interested in the education of their children. But the contradiction is easily explained. People with higher incomes and higher levels of educational attainment _do_ display a greater interest in education. They also, however, have increased channels of informal communication (Wilder, _et_ _al_.; Carter, Greenberg and Hailer; Carter and Chaffee). They are more likely to participate in parent-school functions, 'back-to-school' nights, and conferences with teachers. They are more likely to have informal social contact with teachers and other school personnel in their communities.

In contrast, the 'poor' -- people of low income and low educational attainment -- are least likely to have informal channels of communication about schools. Consequently, when surveyed they respond that they want to know more about their schools. And, if given the opportunity, they are as likely to attend and participate in, parent-school functions. In many schools with 'low-income' pupils, however, even these minimal opportunities for participation do not exist (Wilder, _et_ _al_.).

The 'poor' are disadvantaged from another perspective. Examining the 'structure' of communications about schools, Carter, _et_ _al_. find that those people who know more about schools want still more information. Those who seek more information about schools learn more. These people tend to be in communities of high socio-economic composition.

In addition, Carter _et_ _al_. find that most of the discussions and talk -- the exchange of information -- take place between parents. Only a small percentage of the communication about schools (Carter estimates 14%) occurs between parents and teachers or administrators. (Carter et al. do not control for parents' social class. Therfore the finding applies to all parents -- and not to any particular class.) Parents prefer to rely on 'word-of-mouth' to get information about schools. They prefer to talk to people 'like themselves'. They are hesitant to contact school personnel directly. Thus we can infer that any information strategy which relies solely on parents seeking information from schoolmen is least likely to assist parents in lower socio-economic communities.[13]

Surveys not concerned with particular 'target' populations cite substantial parent (and citizen) satisfaction with the quality of educational services. In general, these surveys do not try to find sources of parental dissatisfaction or satisfaction. Studies which focus on specific target populations based on race and/or geographical area, however, are particularly concerned with parental attitudes about the quality of educational services. Some of these studies reveal low consumer satisfaction with the quality of educational services.

Wilder et al. report that 85% of their sample was either 'very satisfied' or 'somewhat satisfied' with schools. Probing further, Friedman reveals that increased contact and knowledge among parents leads to greater satisfaction with schools. Regardless of social class, level of educational attainment and amount known about schools, overall satisfaction remains high. Carter, et al., also find that respondents of high social class or educational level display slightly more satisfaction with schools.

On the other hand, the Koerner Commission reports that only 43% of Negro men surveyed, and 42% of Negro women were 'generally satisfied' with the quality of public schools in their neighborhood. Comparable figures for white men and women were 52% and 44% respectively.[14] Respondents were both from cities which had experienced 'civil disorders' and from cities which had not. No substantial difference between races about importance of 'quality education' was reported.

Similarly, in a survey of the Boston public schools Cronin and Hailer report that only 52.9% of their sample was satisfied with the present schools and would not enroll their children in another school if circumstances permitted. 9.1% replied that they did not know, leaving 38% of the parents dissatisfied with the present quality of public education in Boston. Of all the studies consulted this is the highest incidence of parental dissatisfaction with schools.

In a survey of attitudes towards education on New York's Lower East Side, Clower and Jones find that 19% of the 'lower class' parents with children in school considered that 'public schools' were the 'first or second biggest problem in the community'. Comparable figures for 'working class' and 'middle class' parents of similar status were 22% and 31% respectively. Most of the community was fairly satisfied with schools. Parents of 'higher' social status were somewhat 'less' satisfied. In general they were 'more aware' of the value of education, had a greater interest in a 'quality' education, and therefore had more reasons to find their expectations unfulfilled and be dissatisfied.

In sum, satisfaction or dissatisfaction with schools appears either to be somewhat localized or to vary with particular research interests.

Opinions do seem to vary somewhat from locality to locality, depending on individual conditions. On a broad, cross-sectional scale, parents are satisfied with education. Nevertheless they would like more information about education. But information itself -- even information critical of education -- does not seem to lead to parent dissatisfaction with schools. In turn peoples' desires for more information about schools depends on factors not directly related to their satisfaction with schools. Rather social class and level of educational attainment are critical.

From this data, we might tentatively conclude that merely disseminating information about education will not result in any increased (or decreased) satisfaction about the quality of educational services. The desire for information is not directly related to opinions about education. An information strategy which relies on disseminating information will not result in significant change in consumer activity, participation, organization or interest in educational affairs.

On the other hand, a consumer protection mechanism might indirectly increase consumer dissatisfaction -- and consequent action -- about schools. Regardless of social class (and, by inference, race), people want information about the quality of education their children are receiving. Any consumer protection mechanism must have a strategy for translating this desire into consumer action. This is no simple task.

4) Strategies for Consumer Protection Mechanisms

In what ways could consumers use information about schools to promote their claims against schoolmen? What should consumers know or not know about their schools? In most instances they will seek to use the information readily available to teachers and education administrators. Two issues are at stake. The first concerns the content of the information itself. The second concerns the standards under which consumers gain access to information. Moreover the content of information is not solely limited to consumers. Client privacy is an important question -- how can it be protected? What must administrators know to carry out their responsibilities? Finally, how should consumers get access to information about education?

These questions suggest two strategies: social accountability for schools, and information guidelines. The former would seek to hold schools responsible to the public for the 'outputs' of educational services. The latter would attempt to standardize the criteria for release of information to the public withholding certain information from the public and withholding other information from educators in the interest of privacy.

a) Accountability

The rationale behind social accountability schemes is straight forward. Public service organizations are accountable to the public they serve. Therefore the controlling bureaucracies need to publicize information about the quality of the services they provide. Consumers can then utilize this information to judge the effectiveness of existing social services, and the extent of improvements in social services over time. But what information about school performance do consumers need? There is no easy answer. Schools produce many things in addition to academic achievement, including racial attitudes, jobs and revenue in communities. To be realistically accountable to consumer needs, facts, figures and other measures about all of the various outcomes of schooling are needed.

Information about academic achievement, however, provides the standard example of social accountability in education. James S. Coleman has aptly summarized these arguments:

> The publication of carefully designed measures of academic performance, which pay attention both to the total distribution of achievement and to the increment in achievement rather than the absolute level, could have, it appears, a very strong impact in changing the direction of pressures upon the school policy-makers, towards academic performance.[15]

Though an imperfect instrument, standardized achievement scores are an easy, efficient and routine estimate of academic performance. But even Coleman cautions that:

> Publication of academic performance data by itself changes only the information basis on which community members may take action; it does not provide any new action alternatives.[16]

The process of stimulating consumer involvement in schools does not directly follow from providing information about academic performance.

In addition, many consumers are concerned with issues other than academic performance. Accountability through achievement tests is only one form of information about schools, and a reflection of a particular educational philosophy. Other forms of information about schools reflect other assessments of educational quality and philosophy. Many consumers -- and especially poor consumers -- have complaints with administrators, over school building policies, finances, efficiencey, teacher attitudes and recruitment policies, discipline and curriculum. Individual consumers frequently have individual disputes with particular teachers or educational officials. In other words, the information which consumers need and want depends on their grievances, their goals and their methods for resolving their problems.

b) Guidelines

Information guidelines -- to standardize the delivery of information -- have a similar rationale. Schoolmen claim that much of the information they possess is privileged information. Administrators do not want to publicize information which consumers need to assess school performance. Instead they try to conceal their own embarassments and failures. In many situations, consumer interests are best protected by insuring consumer access to a wide range of information -- by normalizing consumer requests for information. In other situations, consumer interests are best protected through bureaucratic ignorance -- by limiting the information school systems can collect or disseminate about their students. The problems of consumer privacy are exacerbated by widespread use of electronic data processing systems. Computerized information about students can be made accessible to a wide variety of people, organizations and institutions. Consumer privacy guidelines are needed to determine the sorts of information that should be collected by school systems, the length of time the records should be maintained, and the conditions under which various people, organizations, and institutions should have access to them.

By themselves, both social accountability schemes and information guidelines are limited. Both present reasons for getting more information to consumers. But neither strategy considers critical consumer activities: if consumers get more information, how will they use it? Implied are strategies of consumer organizing and other forms of political activity. Thus we must consider the ways in which social accountability schemes and information guidelines might be implemented.

5) Information Strategies

In most disputes with their schools, consumers need objective information. Information agencies might be established to assist consumers. Agencies might be staffed by consumers themselves, or by skilled professionals, or by some combination. They might be neutral and impartial when dealing with consumer complaints, or might be overtly adversarial and seek to pursue the consumer's point of view. In order to promote social accountability or to use information guidelines, however, any agency would have to involve consumers directly. An information agency cannot exist in a vaccuum. Thus an agency which merely supplies consumers with information -- such as a research and publicity agency — is not sufficient.

An information agency, alternatively might function as a 'back-up' and resource organization, providing information supportive to consumers, surveying consumer grievances, and researching points of common interest and divergence between schoolmen and consumers. It could monitor administrative actions and ensure compliance with information guidelines.

It could function as a 'watch-dog' on issues of consumer privacy. Where information about schools is diffuse, the agency could pull the shreds together. Where information is lacking, it could publicize an authoritative, impartial interpretation of events, thus raising the level of debate. Where consumers lack knowledge of their procedural rights under existing statutes and regulations, it could articulate them.

The information agency, however, could not advise consumers about how to act, or what the best strategies are. An information agency could not work with consumers -- or consumer groups -- to translate information into action. Thus the information agency would be severely limited in its role -- it would not assist consumers at the most critical juncture. Once consumers have decided to act on the basis of information, they need various forms of other assistance. In some instances administrative critics responsible to the school system or advocates -- either professional or para-professional -- might help pursue consumer grievances. In other instances consumer organizations or co-ordinated attacks on child service bureaucracies are needed to stimulate affective political action. In each instance reliable information can be the basis for effective action.

Thus we might have proposed a research and publicity agency as a viable consumer protection mechanism. Certainly this type of agency would make most direct use of information guidelines. It would try to promote social accountability. But it would be a weak solution to the complex and involved problems of consumers.

Any attempt to distribute more information about schools is, in essence, an effort to redistribute power within schools. Giving consumers more information about schools is an attempt to change the authority relationships between schoolmen and their clients. Any plan to give consumers more information about their schools must be part of an overall strategy of action. If consumers just have 'more' information nothing would change; consumers would not take effective action on the basis of the information. As survey research findings have shown, consumers seem satisfied with their schools.

Consequently, to right the imbalance of power between schools and their clients, information is a necessary but not sufficient condition. Social accountability schemes and information guidelines can only be implemented as part of more broad based strategies to protect consumer interests. Ensuring that consumers get information about schools, and that their personal privacy is respected, represents the beginning of efforts to limit the power of public service monopolies. But other institutions -- and viable consumer protection mechanisms as we have proposed in the report -- must use the information to bring about effective actions. Gathering and disseminating information represents only a starting point; it is not an end in itself.

6) Guidelines Concerning Personal Pupil Information

Guidelines in this area have already been carefully considered. We endorse the proposals of the Russell Sage Foundation found in Guidelines for the Collection, Maintenance and Dissemination of Pupil Records.[17] The Guidelines are the result of an extensive examination of the subject. They consider *the conditions under which personal pupil data should be collected;

*the ways in which data should be classified and maintained;

*the procedures under which data should be securely stored; and

*the conditions under which information regarding pupils should be disseminated.

We shall summarize the Foundation's recommendations. We suggest that any consumer protection mechanisms established as an experiment obtain copies of The Guidelines and seek to implement them.

First, the Guidelines consider that only hard data directly related to pupil performance be collected and maintained by school authorities without parental consent.

*Hard data includes information related to pupil's age, grades, attendance records, and standardized test scores.

This category of data represents an objective picture of a pupil's successes in school.

All other types of data should only be collected with the expressed consent of the parent, legal guardian and/or student when of age.[18] This data is not abslutely related to pupil performance.

*Included in this category are the results of diagnostic personality tests, clinical psychological evaluations, and family decisions.

Second, the Guidelines consider that only a minimal amount of personal data, necessary for the operation of the educational system, needs to be maintained by schools in perpetuity.

*Data maintained in perpetuity would be limited to identifying data -- name, address, and birth date -- academic work completed, level of achievement, and attendance.

A second type of substantive data is not essential to the operation of a school system. This type needs to be eliminated from records at periodic intervals.

*Data included would be interest inventory results, standardized test scores, and family background information.

A third kind of information -- potentially useful but not yet verified -- ought to be annually reviewed and destroyed as soon as its usefulness is ended. In the possession of people unqualified to interpret it, this information is potentially quite prejudicial to students.

*Included in this category are legal and psychological interviews, subjective teacher evaluations, counseling reports, and disciplinary actions.

Third, the Guidelines recommend that all pupil records be maintained in a secure fashion to prevent unauthorized access. Security procedures are especially needed to curtail unauthorized dissemination of computerized pupil files. Review procedures are needed to eliminate unnecessary and prejudicial information, according to the criteria previously discussed.

Parents, legal guardians, and pupils of age must be allowed to inspect all records containing substantive information. They should be allowed to submit corrections or interpretations of information they feel is inaccurate. If necessary, they should be allowed to challenge matters of fact in formal adversarial proceedings.

Fourth, the Guidelines would limit substantially the dissemination of pupil records to third parties. Without the consent of parents or students, schools may give verified pupil information only to

*other school officials -- including teachers within the district who have a legitimate educational interest;

*state superintendents and his officers or subordinates, where consonent with statutory responsibilities;

*the officials of other primary or secondary school systems where the pupil intends to enroll.

Other than to these officials, schools should not divulge pupil information to any inquirer except

*with the express written consent from the parent, legal guardian or student

*in compliance with judicial order, or orders of administrative agencies that have the power of subpoena.

Furthermore, except in compliance with official court or administrative orders, schools should not release any unverified information of a subjective nature, or any information gathered by any non-school agency. As a matter of general practice, this information should remain in the possession of the professionals who obtain it.

7) Right to Know Guidelines

Schoolmen collect information about a wide variety of subjects.

But, as we have explained in our discussion of consumers and information, schoolmen only publicize information to suit their own purposes. In part they are exercising their professional prerogatives. Yet frequently they are attempting to disarm their critics, to curtail informed debates with the public over policy, and to preserve their bases of administrative power. Furthermore, as we have also explained, consumers might want detailed information from schoolmen about an equally wide variety of topics. Depending on their particular concerns, consumers will want to know (a) what the dimensions of any educational problem are; (b) what schoolmen think the reasons for the problem are; (c) what schoolmen propose to do to resolve the problem.

How could guidelines best ensure that consumers will have access to the information they need? Guidelines might try to stipulate all of the various forms, categories and descriptions of information that consumers should have access to. This, however, would be the weakest of all possible solutions. First consumers would have to rely on school men's discretion to get information. If schoolmen do not want to release information, they could consider it in a category not covered by guidelines. Second, consumers' needs and interests in particular categories of information are liable to change frequently, as different disputes arise and are resolved. Using this approach, guidelines would have to be constantly updated. Third, the burden of proof would be on consumers to substantiate why they should have particular information. Consumers would have to justify their reasons for inquiry. Fourth, schoolmen might not have compiled all the aggregated data which consumers want. Guidelines might stipulate various forms of aggregated data and still omit some compilations which consumers seek. Rather than trying to prepare for every eventuality, consumers merely need access to raw figures, and can aggregate it as they see fit. In short, guidelines stipulating the types of information consumers should have would be sorely deficient and restrictive.

A more promising approach would be along the lines of the Federal Freedom of Information Act of 1966.[19] With certain limited exceptions, all information that schoolmen possess would be made available to the public on request. Exceptions would include

*all personal pupil records, which would be handled according to the proposed Russell Sage Foundation Guidelines;

*internal staff communications and memos of a basically private nature;[20]

*personal personnel records of officials, teachers, and administrative staff.

Despite inherent limitations, this approach has important strengths. First, the burden of proof for denying consumers information rests with schoolmen. Schoolmen have to justify why consumers should not know what they want to know about their schools. Second, consumers have access to most categories of raw data, and can aggregate it as they judge best. They are not limited to administrators' interpretations of figures. Third, consumers are not limited to specific categories of information. Rather, if they can establish that schoolmen possess certain information which they need, they can probably gain access to it. Consumers can demand information when it suits their purposes, and when they wish to pursue grievances with schoolmen. Fourth, schoolmen's 'professional' discretion is not subject to interrogation. In most instances, 'professional' questions will be raised in the 'internal' forms of communications, subject to exemptions from publication. Once the 'professionals' exercise their judgment, the 'policy' (or opinion) should then become public information. Fifth, the task of gathering and compiling information rests with consumers, or agents or agencies acting in their interests. School systems need not incur excessive additional costs to collect, analyze and disseminate information.[21] They merely have to open their files to information seekers, and comply with requests in the normal course of business.

Special procedures, however, are needed for sensitive information pertaining to pupils' and schools' successes, failures, and activities. While individual pupil records should not be made public, schoolmen should compile certain types of pupil and personnel data, aggregated on a school by school basis. Included would be

*achievement data which reflects how well schools are fulfilling their roles as educational institutions;[22]

*attendance data, including the number of transfers, suspensions, expulsions, and absentees.

*number of teachers who resign during the year, the number of replacements who enter, and the daily number of teachers absent;

*other indicators of how well schools are fulfilling their goals as educational institutions.[23]

Aggregate data in these forms should be readily available to consumers. Consumers can then have some assessment of how well their schools are performing. This is a large step in the direction of holding schools accountable for their performance.

8) Using Information Guidelines

Ideally, information guidelines should have the force of law. At present serious deficiencies exist in the flow of information to consumers, from educators administering public school systems. Serious problems also arise concerning procedures for the collection, maintenance, and release of pupil records. Guidelines could be enforced through adversarial proceedings in court.

A legal "imprimatur" for guidelines, however, appears remote. Most school systems will not acknowledge that informational problems exist. And if they do acknowledge the problems, many professionals claim that they are understaffed and would be unable to enforce any guidelines.[24] Thus one of the initial concerns of any consumer protection agency might be to raise the substantive issues of information. Second, after demonstrating that informational problems exist, the agency might propose guidelines -- tailored to local situations -- as a way of dealing with the problem. Third, it might press for implementing guidelines while continuing to demonstrate the problems of acquiring information. Fourth, once the guidelines are recognized by schoolmen as a way of solving their problems, the agency might monitor them, and also encourage the establishment of formal monitoring mechanisms. Fifth, a consumer protection agency might also lobby for enactment of appropriate legislation and/or administrative regulations.

Of course this is no easy task. Each mechanism we have proposed might use guidelines in different ways and implement them through different strategies.

The administrative critic, for example, is in a good position to supply consumers with information. He can outline the problem, draw up information guidelines and discuss them with other administrators. If he succeeds in getting other schoolmen to agree, his office can then handle consumer requests and complaints. He might compile various measures of school performance, compendiums of consumers' rights, and directories of responsible officials for various complaints. His office might implement, supervise and monitor procedures for the collection, maintenance and dissemination of pupil records.[25]

Similarly consumer unions or a Children's Defense Fund might use information guidelines as a mechanism for arousing consumer concern. Once guidelines are implemented these groups would benefit: more information would be available to their constituencies. They might get clearer insights about the public service they are watching.

Thus guidelines might be doubly useful -- both as an issue around which to organize and as a mechanism for monitoring the activities of schools.

Footnotes to Appendix

1 Ellen Lurie, How to Change the Schools, New York: Vintage Books, 1970, p.252-253.

2 Donald N. Michael, "On Coping with Complexity: Planning and Politics," Daedalus, XCVVII (Fall, 1968, pp.1179-1193), p.1192.

3 Charles E. Silberman, Crisis in the Classroom, (New York, Random House, 1970), p.438. See pp.435-439 for a full discussion of this situation.

4 Ibid.

5 Ibid. p.439.

6 We fully recognize, of course, that this leads to many political obstacles.

7 James S. Coleman, "Multilevel Information Systems", RAND Consultant Research No. P-4377, p.2.

8 In a recent survey of record keeping practices, Goslin and Bordier (1969) showed clearly that procedures for the collection, maintenance and dissemination of personal pupil information was almost exclusively a matter of local discretion. The survey was conducted in 54 districts in 29 states. On the basis of this limited sample, they found that "parents and pupils are more often denied access to school records than any other category of potential users." They reported wide variation in current practices regarding access to pupil records by third parties, for example local police, prospective employers and Federal police agencies. "More than half the superintendents reported that juvenile courts or CIA or FBI officials would be given access to pupil records without subpoena." See David A. Goslin and Nancy Bordier, "Record-Keeping in Elementary and Secondary Schools," in S. Wheeler (ed.), On Record: Files and Dossiers in American Life, (New York: Russell Sage Foundation, 1970).

9 Guidelines for the Collection, Maintenance and Dissemination of Pupil Reocrds, (New York: Russell Sage Foundation, 1970), p.6.

10 Ibid.

11 C.A. Darby, A.L. Korotkin and T. Romashko, "Survey of Computing Activities in Secondary Schools," Washington, D.C.: American Institutes for Research, 1970, cited in Vivien S. Teitelbaum and David A. Goslin, "Reactions of the Counseling Profession to the Russell Sage Foundation Guidelines," Personnel and Guidance Journal, September, 1971.

Surveys:

1. Carter, R. F., Voters and Their Schools, Stanford: Stanford University, Institute for Communication Research, 1960.

2. __________, and Chaffee, S., The Structure and Process of School-Community Relations: Vol. II: Between Citizens and Schools, Stanford: Stanford University, Institute for Communication Research, 1966.

3. __________, Greenberg, B., and Haimson, Alvin, The Structure and Process of School-Community Relations; Stanford: Stanford University, Institute for Communication Research, 1966.

4. Cloward, Richard A. and James A. Jones, "Social Class: Educational Attitudes and Participation" in Education in Depressed Areas, edited by A. Harry Passow, Teachers College, Columbia University, Teachers College Press, 1963.

5. Cronin, Joseph M. and Richard M. Hailer, Organizing an Urban School System for Diversity: A Study of the Boston School Department, Massachusetts Advisory Council on Education, 1970.

6. Friedman, Natalie, Observability in School Systems: A Problem of Inter-System Integration, Columbia University: Bureau of Applied Social Research, 1968.

7. Gallup, George, How the Nation Views the Public Schools: A Study of the Public Schools of the United States, Princeton, Gallup International, 1969.

8. Gallup, George, "The Public's Attitude toward the Public Schools: Second Annual Survey," Phi Delta Kappan (October, 1970).

9. Gottfried, Frances, "Survey of Parental Views of the Ocean Hill-Brownsville Experiment," (Monograph) Queens College, Vol. 2, No. 5, October, 1970 (Community Issues).

10. Jennings, M. Kent, "Parental Grievances and School Politics," *Public Opinion Quarterly*, (Fall, 1968), 363-378.

11. National Advisory Commission on Civil Disorders, *Supplemental Studies for the National Advisory Commission on Civil Disorders*, U. S. Government Printing Office, July, 1968.

12. Wilder, D., *et al*, *Actual and Perceived Consensus on Educational Goals between School and Community*, Vols I and II, Columbia University, Bureau of Applied Social Research, 1968.

13 The studies which describe the importance of information in schools do not divide data by race. Therefore we must infer that various racial groupings will seek and respond to information similarly, controlling for social class and level of educational attainment. In particular, Wilder _et al_ and Friedman controlled for race through sampling design by picking schools according to geographical location and community size.

14 This is not to argue that the remaining per cent were people dissatisfied with the quality of public education. A large per cent of each group responded that they did not know how they felt about the quality of public schools. (The figures are 21% for Negro men, 21% for Negro women, 26% for white men and 31% for white women.) In fact only a small per cent of each category reported that they were 'very dissatisfied' with the quality of education. (The figures are 15% for Negro men, 14% for Negro women, 9% for white men and 9% for white women.)

15 James S. Colemen, "Incentives in American Education," (Paper prepared for the Brookings' Seminar on Incentives in Public Policy, February 20, 1969, Eric No. ED 030-191), p.5.

16 _Ibid_.

17 New York: Russell Sage Foundation, 1970. The points contained the results of a conference on the ethical and legal aspects of school record keeping held in the spring of 1969, are substantially similar to Arthur R. Millers' recommendations. See _The Assault on Privacy_, Ann Arbor: University of Michigan

18 _The Guidelines_ are not explicit about when a student reaches this age. We infer that an appropriate age is the minimum age for voting.

19 While the Act has important weaknesses -- notably the broad areas of exemptions and, in some instances, vague agency administrative regulations -- the _Georgetown Law Journal_ concludes

> The basic approach of the Act is sound. It makes all records presumptively available, with the agencies bearing the burden of justifying withholding. This is certainly better than forcing the individual to show some special hardship to rebut a prescription of non-availability. The creation of categories of exemptions is also the better way of dealing with the necessity of

> keeping some records secret. Since it is obviously impossible to make specific reference to all particular pieces of paper that should be exempted, practicality demands that Congress specify only a limited number of general areas of exemptions. But for the Act to be meaningful, these exemptions must be sharply drawn... [The] nine [areas of] exemptions are still too vague to guarantee any real "right to know."

See "Freedom of Information: The Statute and the Regulations", Georgetown Law Journal, 56:18 (1967).

Basically we propose consumers' 'Right to Know' Guidelines, modelled on this Act, but adapted to the problems of securing information from school systems. Consequently we would substentially limit the permissible exemptions.

20 The weakness of this approach is evident in this particular exemption. Who should decide which internal communications and memos are basically private? We can think of no general rule. Rather, situations must be delt with as they arise. We assume that schoolmen will deal in good faith. Instances of bad faith and mistrust will be raised in adversarial proceedings; no information guidelines could adequately cover these situations. Rather we must rely on administrative, political and/or adversary procedures.

21 School systems might want to follow the example of the Federal Act and charge a minimal fee to cover costs of ferreting out information. Or else a school system could establish an office of an administrative critic, one of whose duties being to process consumer requests for information. The costs then should be subsumed in the overall budget of his office.

22 Included in this category is not merely the mean achievement for a school. Also included should be measures of the net mean gain in achievement during the year, the range of achievement level, and changes in the range of achievement level during the course of the year.

23 These indicators -- such as assessments of the level of satisfaction (and happiness) among students and parents, the degree of community involvement in school programs, teacher attitudes towards students, etc. -- will vary from school to school, depending on the community. Not all indicators are quantitative. The nature of these indicators will depend also, in part, on the ways in which these guidelines are implemented.

24 Surveying reactions of school counselors to the Russell Sage Guidelines, Teitelbaum and Goslin report that a number of critics "challenge the administrative feasibility of its recommendations

...They cite providing copies of the record for parents and students, establishing procedures for verifying information in the record, and periodically reviewing and destroying material, as being particularly onerous." Other counselors "applaud" the Guidelines "as a statement of ethical principles and practice" but feel they are of "little avail without some kind of enforcement machinery." See "Reactions of the Counseling Profession to the Russell Sage Foundation Guidelines Personnel and Guidance Journal, September, 1971. Consumer protection mechanisms might well assist administrators as well as provide the necessary 'enforcement machinery'.

[25] For instance his office could handle all requests for pupil information from third parties. He could then secure the requisite parental consent and assist parents to inspect records, file counter claims to educators' interpretations of facts, and bring adversarial proceedings when desired. With the assistance of counselors, his office could periodically cull records and destroy information which no longer should belong in the pupil's records.

Appendix C: ADMINISTRATIVE CRITICS

It remains to discuss two items not yet discussed: probable reactions and existing examples.

Reaction:

What is likely to be the political response to an effort to establish an Administrative Critic? We might expect resistance from teachers and administrators and support from students, parents, and board members. In fact, the limited data available suggests that this may not be so. In a questionnaire sent to professionals in the Detroit Public School System, asking their opinions about a proposed ombudsman, inner-city high school teachers and department heads gave the idea qualified support, and favored allowing an ombudsman full powers of recommendation, investigation, and access to information. Principals were most negative on the idea, and assistant superintendents were somewhat less opposed.[1] This suggests that resistance would be most focused at administrative, not teaching, levels.

There may be ways to reduce this resistance. Possibilities include: establishing a position with limited power and jurisdiction, to be expanded over time (as in Montgomery County); concentrating actively on staff problems to demonstrate benefits provided to professionals; publicizing (informally) situations where the Critic feels the complaint invalid, thereby showing that the Critic can recognize unwarranted opposition to school decisions; choosing as first Critic someone with respect and good rapport with professional groups. In any event administrative resistance to an ombudsman generally decreases as officials see him in actual operation[2]; his actions serve to make schools work better.

A second example, however, shows that support from parents and students may not be as great as expected. In Nassau County, New York, an ombudsman was established in 1966 (temporarily titled "Commissioner of Accounts"). After he had been "ombudsing" for over a year,

> The proposition submitted to the people in the November 7, 1967 election to establish the office of Public Protector was rejected by the voters, although both major political parties had agreed on the compromise proposition to be submitted. ...it is believed the main reason for the defeat of the proposition was that very few people in the County of Nassau knew what the proposed Public Protector bill sought to accomplish.[3]

This suggests that there may be a conflict between the type of public relations needed to get community support and th[illegible]ype needed to neutralize professional resistance.

In any event, the establishment of an Administrative Critic by a school board would be a highly controversial act. It would represent a commitment by the adopting board to do what is now not done: to encourage and manage the complaints of families. It would be an attempt to ensure that school staff keep in mind and deed their primary job as professionals, namely, serving the children of families. Just that attempt will stir significant opposition from many who believe either that the family's interest should not be paramount or that it is already adequately represented and protected.

Examples:

Public school ombudsmen are few and far between in 1970, the Educational Research Service surveyed over 500 school systems, and reported[4] that three school systems have ombudsmen for school employees

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(Fairfax County, Virginia; Dallas, Texas; and Montgomery County, Maryland[5]). Several systems reported faculty within high schools who act as grievance or human relations counselors. In Niagara Falls, New York, a policeman is on loan to the secondary schools as a "student ombudsman." We shall briefly describe the "ombudsmen" in Montgomery County and Rockford, Illinois, and then conclude with several reports compiled from staff visits.[6]

The main differences between the Montgomery County ombudsmen and our proposal are that he cannot initiate major investigations without board approval, cannot hold formal hearings, and does not have the status, salary, and rank of the superintendent. He has been operating as student/parent ombudsman only since May, 1971, so it is too early to make conclusions about his effectiveness. He has appeal rights to the board, but he has not yet used them.

In Rockford an ombudsman team (with two field representatives) was set up at a ghetto junior high school after a parent/student boycott had put severe pressure on the school board. During its first year the team worked with an active Parent Advisory Board, another child of the boycott. The Board was an effective "thorn," and won several financial and curricular victories. After its first year, however, the Board's interest and activity diminished.

The ombudsman program remained active for two years, until the ombudsman was promoted to assistant principal. He had full access to school information and full powers of persuasion and recommendation. The main differences between his office and our proposal are:

3

a) He reported to the superintendent, not the school board.

b) He saw himself as the community's man in the schools, not as a neutral. His background included both teaching and community organizing. Since he is now assistant principal, however, this partisan stance did not jeopardize his career.

c) The ombudsman served only one school and lacked the status and rank of the Critic.

The ombudsman helped to establish programs (e.g., mental health) and resolve student complaints. This often meant working with housing and welfare personnel as well as school officials. School complaints generally cited discipline, and sometimes the ombudsman actually assisted the student in court. Expulsions and suspensions were screened by the Parent Advisory Board as well as by the ombudsman.

The program itself was considered a success, but may lack staying power. Parent interest has ebbed now that the "crisis" situation has disappeared, and the ombudsman position has not been filled by the new superintendent.

Ombudsman for Montgomery County

1. History

Montgomery County Schools first established the position of ombudsman in 1968. The first ombudsman was hired to "serve" only the system's professional employees -- later his "constituency" was broadened to include "supporting-services" personnel as well. The first ombudsman was hired for a two year term, at the level of "teacher specialist" -- after his term ended, he returned to a teaching position.

The Board of Education, newly elected in November, 1970, was faced with controversy over the continuation of the ombudsman. After much discussion and debate, the Board in December adopted a policy statement extending the constituency of the ombudsman to include students and "other citizens who have problems, complaints, information, or suggestions..." The Resolution also re-titled the position as "Ombudsman and Staff Assistant to the Board of Education," and included within its scope possible duties and assignments to the Board. The initial proposal allowed the Ombudsman to initiate investigation on his own -- pressure from teachers and administrators forced the Board to modify this to allow the Ombudsman to initiate a "full-scale" investigation only with the concurrence of a majority of the Board. There does not seem to have been any particular "crisis" leading to the extension of the position to non-employees. It would perhaps be more accurate to say that since the first ombudman had not led to chaos and ruin, there was less opposition to extending his jurisdiction.

5

2. Hiring

The Board advertised in "The Superintendent's Bulletin" in January, 1970. The position called for a Bachelor's Degree, three years' teaching or administrative experience, and the ability to counsel people, "short circuit" red tape, and exercise independent judgment. The duties listed were to serve as Ombudsman in school matters for employees, students, and citizens, and to serve as staff assistant to the Board, preparing reports and recommendation and attending various meetings as an observer. Applicants were asked to write to the Board giving their experience and educational philosophy. Five of forty-three applicants were questioned further by a hiring committee consisting of Board members, the Superintendent and Assistant Superintendents, Presidents of the Principals Organizations, and the Director of Personnel.

3. Incumbent

Thomas S. Fess, a thirty-four year old high school drama teacher, was chosen in April, 1971. Besides teaching in the county school system for eight years, Mr. Fess has spent two full years and many summers as a theatre manager, giving him business contacts in the community. He has some legal experience, consisting of one semester in law school and experience negotiating theatre contracts as manager.

4. School System

Montgomery County is one of the wealthiest in the nation, with a median income of $15,430. It is a suburban "bedroom" community to the District of Columbia with an educated, primarily white-collar, population.

With a county population around half a million and a school population of 140,000, the county spends $170,000,000, three-fourths of its budget, on its 196 schools, averaging around $1200 per pupil. It has growing pockets of black and Spanish-speaking citizens. The school system has been desegregated since 1954. The population is mostly urban and "down country," with a recent migration into the more rural "up-country" area.

5. Power of present office

The Ombudsman reports and is responsible to the Board of Education. His main efforts are usually as facilitator and coordinator. He directs complainants to appropriate channels of communication, where they exist. When these channels do not exist he works through the administrative structure to resolve the problem. If the problem cannot be resolved at lower levels, he brings it to either an Associate Superintendent or the Superintendent. If he is blocked at those levels, he may recommend to the President of the Board that the Board review the matter. In addition to direct appeal to the Board, the Ombudsman makes bi-monthly reports to the Board at executive session. He also makes two public reports annually, discussing generally policy matters and giving a numerical breakdown of issues and complaints.

In addition, the Ombudsman sits as a non-voting member of the executive staff (Superintendent plus Associate Superintendents), the main policy-making group in the system. He has access to all files and information, except that if the file is confidential he must have permission from the employee or student (parent) whose file is involved.

7

He may investigate on his own only if authorized by the Board, and has no enforcement powers.

Mr. Fess sees himself as an "expediter" rather than an advocate. He can't hold hearings, but can call a "conference" of the involved parties. When there are negotiated grievance procedures, as in contract matters between an employee and the system, the Ombudsman guides the employee in using the existing procedures, and only if these fail will he consider acting himself. For students or parents, however, there are no grievance mechanisms and the Ombudsman acts more like a personal advocate.

The salary was initially placed at the top of the teacher "special" scale, and then raised to the Administrator and Supervisor scale ($14,000 - $20,000) at the level of a principal or assistant principal. The staff consists of a single receptionist/secretary.

6. Actual operation

Mr. Fess has been Ombudsman for two months, since May 1, 1971. In that time he had about 60 "cases," mostly from employees and parents, a few from students and "community groups." His office is in the central administrative office rather than in a school, but many students do get to the building on county committee work. He has made many public appearances at Board meetings, PTA meetings, and citizens association meetings. He meets weekly with the deputy superintendent. Mr. Fess has kept his membership in the Federation of Teachers (the professional association.

7. Summary of Cases

A numerical breakdown of cases from the one report made to the Board thus far shows:

Resolved
7 -- supporting services
27 -- professional staff
1 -- student
21 -- parent
4 -- community

60 -- resolved cases
+11 -- pending cases

a. Employees

Problems included questions of salary increases, selection procedures for promotion and hiring, cleanliness of the faculty lounge, installation of a telephone, job dismissals and non-renewals, questions of annual leave, teacher transfer within school, several teacher-teacher and teacher-administrator disputes over assignments, and a charge of racism in assignments. Most of the time the Ombudsman acted as facilitator -- making the needed telephone calls, learning the needed information, bringing together the appropriate parties, and advising his "client" on use of grievance mechanisms and channels of communication. In only one case, a matter of expunging information from employee records, did the Ombudsman make a "recommendation." In a few cases the problems brought to light by the Ombudsman led to improved procedures for evaluation and promotion.

b. Students

The single student complaint involved a bus that was late and overcrowded. Intervention by the Ombudsman proved satisfactory until the end of the year. A second student-related complaint was made jointly by the principal and the president of the student government. There was to be a student election for school Ombudsman. The nominees seemed too militant to fit the intended role. The County Ombudsman explained to the students the role of an Ombudsman -- the result was that the position was changed to an appointed one.

c. Parents

Complaints concerned racial fights, racial terms used by the school, harassment by teachers, general school atmosphere, one hiring decision, placement in special education programs, and provision for educating handicapped children. In each case the ombudsman spoke to the involved parties, bringing them together when necessary: children, parents, teachers, principal, assistant superintendent, or superintendent.

d. Community

The single community complaint was a desire for involvement in selection of a new principal. The Ombudsman arranged a productive meeting between the relevant parents and the area superintendent.

8. Recommendations in Report to Board

a. Employees -- Need for uniform procedures (hiring, evaluation, promotion), brochures and workshops explaining grievance mechanisms.

b. Students -- Need to expand Ombudsman program to include Ombudsmen in local schools. (Board rejected proposal.)

c. Parents -- Dissatisfaction with elementary school programs (10 of 21 complaints.) Need increased awareness in community of human relations problems. Need guidelines and programs to secure community involvement and interaction with the schools.

Need uniformity of notice (of child's absence) sent to parent.

Need policy of immediacy in handling parental complaints.

9. Input

Thus far, there has been no solicitation of complaints. Mr. Fess is afraid of opening a Pandora's box. To offset the isolation of his current office, he hopes to develop a rotating office that will visit individual schools. The Department of Human Relations and the NAACP have channeled minority group complaints to him.

10. Summary

Mr. Fess has been in office for only a few months. Hence it is impossible to evaluate the program, particularly with respect to any increase in parental "consumer" organizing. The real test will come when a complaint by parent(s) is not satisfactorily resolved at administrative levels, and the Ombudsman appeals to the Board. This has not happened.

There have been no discipline problems raised yet, perhaps because the existing system of review is good. (Prompt conferences of parents and principal, five day maximum on suspensions by principal.) There have been a few complaints that approximate tracking and classification grievances. These, too, have been handled within the existing system of review.

Washington Community School

Rockford, Illinois

A. Genesis

In the beginning there was chaos. Washington was a typical ghetto school, with white, middle-class teachers and a predominantly (80%) black student body. As the situation deteriorated, parents formed the Save Our Children Committee (herein, SOCC). Parents came to school in large numbers, and were upset at what they saw. Among the parade of "horribles" that confronted parents were:

a) Washington School pupils average in the 9th percentile on the Iowa Test of Basic Skills (Achievement).

b) Discipline was non-existent. The principal was aloof and not in control. Students who were late to class or who misbehaved were sent to the assembly, where they would, in theory, be controlled. Instead, students deliberately came late to class in order to have a free period in the assembly. Visiting parents saw an auditorium filled with up to a hundred (out of 600) students at a time, without books, teachers, or an education.

c) Teachers and administrators at West High School, where Washington students went after graduation, were openly hostile to Washington students. As a result, Washington students were put in separate, non-honors (i.e., non-college-prep) classes. While not labeled tracking, the effects were the same.

d) Class size was too big.

e) Stories of ultra-punitive discipline spread through the

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community. The final straw was the striking of a black student by a white teacher.

B. Action

The SOCC met unsatisfactorily with the Rockford Board of Education on May 13, 1968. There followed the boycott and picketing of Washington Junior High School. For two days, seventy-five percent of Washington students were absent. Then the Board recognized SOCC. SOCC asked that Washington be turned into a laboratory school for the education of minority group children. Other parts of the original proposal included a "talent retrieval" program, use of teacher aides, a leadership program at the University of Illinois, and an ombudsman team. The program as finally approved included only part of this proposal: a smaller ombudsman program, a parent advisory board, and one year of assistance from the University of Illinois.

C. More Background

Rockford is the second largest city in Illinois. It has 60,000 students in its schools. The school board is conservative. At the time of the boycott, the system had a progressive superintendent, who has since moved to San Francisco. The Washington ombudsman program was intended to be a pilot project, to be extended to two other schools. One year ago the board voted down this extension, ostensibly for financial reasons.

Other gripes against the system: Parents and high school teachers complained that Washington promoted and graduated students on the basis of social age, not academic ability - i.e., that Washington graduates were poorly prepared for high school work. This pushed the kids into truancy in high school, in a very ingenious way. Rather than be suspended in toto, a student would be suspended piecemeal, class by class. If he missed ten classes, he was kicked out - of that class only. Hence he remained on the roles, and the parent was not notified. The result was a large number of students attending just one or two classes. Instead of an abrupt suspension, which could be fought in a single action at the time of the suspension, students faced a slow erosion of their schooling.

Because of new Illinois anti-segregation laws, racial balance has somewhat returned to Washington school Two feeder schools have been added. These send poor white migrant families, who are unhappy about being in Washington but have no money to send their children elsewhere. These kids, however, go to a different high school - tracking is "geographic," in this sense.

D. Parent Advisory Board (PAB)

Until the boycott, there was little parent involvement in the school. There wasn't even a PTA. The initial PAB consisted essentially of the origianlly SOCC, plus one teacher representative and two student representatives. In addition, representatives of the superintendent's office, the principal, and the teachers union attended meetings as non-voting members. Originally there were over a dozen parents on the board. There was no takeover or cooptation of the PAB by the superintendent, in part because the superintendent didn't want to be involved any more than he had to be.

E. Affects and Effects

During the first year, the PAB was an active "thorn" in the operation of the board. The board wanted to continue ignoring the

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the schools in Southwest (black) Rockford, but the PAB kept on its back, and did win some concessions. In more concrete terms, these victories included lower class size, increased flexibility in the curriculum, and increased fund[illegible] In addition, tracking was eliminated in Washington.

In theory, the PAB was more powerful than a typical PTA because it had powers to make recommendations to the board, to review all cases of expulsions (or, more precisely, cases of students recommended for expulsion), to hold workshops for teachers, and, perhaps , to help select staff for the school. In practice, the PAB was active only during the first year. In that time the PAB reviewed over a dozen cases of recommended suspensions. There was only one recommended expulsion, which was referred to an agency on the recommendation of the PAB. In general, the suspension rules in the school are fairly enlightened - the first suspension is for 1 day, or until the parent comes with the kid to the school to talk to the teacher or principal. This ensures that the parent knows what is going on.

After the first year, the PAB became somewhat dormant. Parents from the Board have moved into other community-related things. Slots on the PAB are presently unfilled, begging for interested parents. There are several reasons for this. First is the lack of a crisis. The school has improved, so many parents sit back and trust the schools. The discipline problem has diminished, so in a sense the original mission of the Board is over. The Board, in any case, became "bored" with too many discipline problems the first year.

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While there are still a few active parents, there has been no success in broadening the Board's base to include the new white feeder schools. Other reasons for the demise of the PAB include a new set of change-oriented teachers, most of whom have come to Washington since the boycott. (Turnover the following two years was over 30% each year). Also, the position of ombudsman has been unfilled for nearly a year. This implies that an ombudsman-type device may be a necessary catalyst and prod if a parent union is to sustain itself. In other words, a parent union is not self-sufficient. Without funds, without large amounts of time, and without a continuing crisis, it will not remain mobilized.

F. Ombudsman

The first ombudsman was recommended by the PAB and approved by the superintendent, who knew and trusted the PAB recommendation. Within the year he was fired, perhaps because he was the Minister of Education of the local chapter of the Black Panther party.

The second ombudsman was Mr. Nate Martin. He was a teacher and had experience in community organizing as a CAP associate director. Since the ombudsman is a full time job, including summers, Mr. Martin did not continue teaching. He was ombudsman for one year, after which he became assistant principal in the Washington school. This was considered a promotion, one which he had wanted.

Since his promotion, there has been no ombudsman (for almost one year). In part this is because there was no superintendent. In part this may reflect a campaign of erosion by the school board, which has no interest in the program. It is not clear what future events will show.

In addition to the ombudsman, there are two field representatives, para-professionals from the community chosen by the PAB.

The ombudsman's salary is on the teaching scale, prorated for summer service. He is directly responsible to the superintendent of schools. In Rockford, where the superintendent was more progressive than the school board, this may have been best.

Mr. Martin had wide ranging powers and authority.

a) He had complete access to people and papers.

b) He could be as vocal as he wanted.

c) He could initiate his own ideas and investigations.

d) He saw himself as the community's man in the schools, rather than a neutral complaint-manager.

The official job description lists other functions (see, infra), including creating new programs, finding new funds, and serving as a liaison to different schools and publics.

In general, things worked well. The most likely problem - non-neutrality as ombudsman - seems to have worked out. In part this is because a principal who would support the program was deliberately selected. Mr. Martin's promotion to assistant superintendent shows that he did not jeopardize his relation with staff and administration by being a community advocate. On the other hand, perhaps he was not really a community advocate. This is difficult to determine, Perhaps the main point is how dependent the success of such a program is on the particular situation and individuals involved.

The ombudsman's activities were in two areas. First, he set up programs, particularly with outside agencies like mental health clinics.

In this respect he could free-lance - observe the need and find the program. This in turn provided resources to the teachers and school, and lent to the school an atmosphere of hope.

The second major area involved complaints, mainly from students. These complaints fall into three areas. First were complaints which led to a housing problem - e.g., the kid lived in a room with eight others, and could not study. Here the ombudsman could help the family work with the Public Hosing Authority to apply for housing. The second area was similar - welfare problems. Finally there was straight student complaints. These generally involved discipline that the kid was protesting. Here the ombudsman talked with the student and teacher, and tried to resolve things informally. This was done in a minority of of cases. Most often, the parent was called in, and a similar discussion ensued. The most frequent stance of the ombudsman was to explain to the parent why the kid was being disciplined - so in a sense he served as a school representative. Because of his respect and reputation, however, this did not compromise him in the eyes of the community.

The avenues of appeal on discipline procedures were as follows. If the problem was not worked out informally, the ombudsman could take the case to the PAB, where the teacher would have to appear and argue his side. The next and final appeal was to the superintendent. In one case a teacher was transferred, against his will, to another school, by the superintendent. Legal action was never entered into by the ombudsman.

As mentioned, most of the ombudsman's complaints came from students. Parent complaints generally went to the PAB, and concerned teachers, discipline, suspensions, demerits, and extra-curricular activities. The PAB acted in a similar fashion to the ombudsman - go to the source and find out what's happening. Often the PAB sought advice from the ombudsman. During the first year the PAB received around ten complaints a month. After that the numbers dwindled. This is surprising if we expect complaint management agency will stimulate complaints. The ombudsman, during his one year stint, recieved up to ten or fifteen a week, which sounds like an enormous number.

G. Training

The ombudsman's training was in teaching and community organizing. He had no legal training. He often went into court on behalf of students brought there on petty theft and vandalism charges. By showing the interest of the school in the kid, and by establishing good rapport with the judge and probation officer, the ombudsman was often able to get the kid back into school.

There was a program for field representatives and parents given by the University of Illinois. This program stressed strategy, how to present your case, and some legal training. There was also some sensitivity training and community organizing work.

H. Teacher response

The teachers at Washington were negative to the ombudsman project, but passive in their opposition. Since the inception of the project, most of the opposing teachers have left, and the new teachers are much happier about the idea. Teachers have not used the ombudsman or PAB as a complaint mechanism, but have complained through the

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administration. The initial teacher opposition was basic conservatism plus fear that the ombudsman and PAB would monitor their classrooms. This has not happened. The principal was cooperative to the project, because he had been specially selected on that basis.

I. Affects and Effects

According to the Ombudsman Report (see infra), no controlled study has been made, but behavior and absenteeism problems have diminished, turnover of staff has declined, and achievement has improved. The only piece of hard data is a low turnover (10%) this year, and a rise in one grade's achievement scores from the 9th to the 40th percentile. Generally, most of the successful appraisal comes from non-measurable, qualitative changes in the atmosphere of the school.

Official Job Description

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OMBUDSMAN

1. He shall be directly responsible to the Superintendent of Schools or to his delegated staff representative. In carrying out his responsibilities, he shall be alert to suggestions by the Lay Advisory Board of the school in which the major part of his responsibilities shall occur.

2. He shall have a cooperative relationship with the Principal of the school. In this cooperative relationship, he may, through the Principal, receive the authority to work with professional personnel, with non-certificated personnel, and with children in the best interests of the school and each individual. He shall submit reports at least monthly and more often, if requested, to the Superintendent of Schools, to the Principal, and/or to the Lay Advisory Board.

3. He shall seek through community agencies, both public and private, those services which will benefit the school and the individual(s) within the school.

4. He shall develop a liaison relationship with the school to which the children will go and the staff.

5. He shall develop a liaison relationship with the school from which the children have come and with the staff.

6. He shall have the responsibility of seeking additional funds through public and private sources to improve the services of the school to the staff and to the children.

7. He shall work closely with the Open Schools Directors to enlarge the services of the school system to as many individuals as possible.

8. He shall assume any other duties as may from time to time be delegated by his superior. Furthermore, his superior shall make any adjustments in the scope of his responsibilities as outlined and that which shall be in the best interests of the school.

9. He shall have the responsibility for the supervision of the work of the field representatives.

Approved
11/10/69
ee

Official

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Report - Ombudsman Program
June, 1971
Washington Community School
Rockford, Illinois

The community school concept was developed three years ago because of parents' dissatisfaction with the schools. Many parents realized that their children were having the same kind of school experience they had had and that changes were not being planned. Also, parents believed that the staff and administration had low expectations of the students which was a factor that contributed to the children's failure to learn. After trying to work through normal channels e.g. discussion with school administrators, the parent group organized a boycott of the school. Seventy-five percent of the students stayed out, causing the school system to lose (considerable) state aid money and the parent group was finally recognized as having a legitimate voice in school affairs. As a result of meetings between the parents and school board, a proposal was adopted that included the creation of the advisory board and ombudsman team, as well as requests for for additional funds (which were never granted).

Another result of the community effort was to make the city itself aware of some of the problems (needs) in southwest Rockford, an area with low-income families and under-achieving students. Though Washington school has had a predominantly black student body, this year the racial balance was changed to be about half white and half black with some Spanish speaking students. Most of the families are at lower middle to lower income levels. Last year the school became a middle school instead of a junior high school and now houses about 600 students in grades 6,7,8.

The pupil-teacher ratio was an important issue; many believed it was much too high for the school (staff) to meet the educational needs of students. By lowering the ratio to about 15-17 students per teacher, there could be a more flexible curriculum and more individualized instruction (to help students overcome educational handicaps). This and other factors led to the formation of the advisory board, or new concept intended to give parents some power in decision making.

The advisory board has consisted of interested parents, school staff members and a few professional advisors; it has provided a forum for administrators and community persons. Some of the goals of the board are:

1. To make transition to middle school easier for students.
2. To coordinate services of the school and community (to meet the needs of the students).
3. To provide an open atmosphere for stating grievances.
4. To offer suggestions on community needs to the administration.
5. To make the public aware of the needs of the school.

Two years ago members participated in in-service training sessions sponsored by the University of Illinois in order to help members better understand their role, (because of turnover in membership the impact of these sessions is not known). Last year the board joined teachers and students in writing a code of conduct, a vehicle intended to guide students' behavior in a more structured way. The board also has power to review the case of any student recommended for expulsion in order to make sure every effort had been made to keep the student in school and to correct poor behavior patterns. Other possible activities might include programs for the community, drug seminars, etc.

Cont.

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The ombudsman team is the heart of the community school idea; at Washington the ombudsman is aided by 2 field representatives. There are many aspects to the team's work. First, the ombudsman is meant to be the peoples man in school, as such he is not responsible to the principal but to the city superintendent. He works with both the staff and administrators to develop programs and to suggest new resources for classroom teachers,(as a result, the ombudsman needs a thorough knowledge of classroom techniques). The ombudsman is primarily a spokesman of the community and advisory board and works to establish trust between them and the school personnel. Some of his other duties include the following:

1. Coordinate activities of the middle school and elementary feeder schools.
2. Works with the high schools as a middle school representative.
3. Has attempted to raise funds from local industry to develop educational programs.
4. He aids teachers in understanding the needs of students.
5. To some extent he coordinates the work of social work teams
6. He supervises the activities of the field representatives.

The two field representatives at Washington can be described as home-school counselors. They are not teachers, but para-professionals, chosen because of their close knowledge of the community. The duties of the field representatives are distinct from regular counselors; while the counselor is trained to deal with emotional difficulities or problems that may arise in school, the field representative is expected to work with the whole family unit, recognize that a child's school experience is just one aspect of his life, and that his home enviornment profoundly affects school achievement. The ombudsman and field representatives work with the counselors to remedy difficulities that formerly could not have been dealt with.

The ombudsman team works with local agencies such as the Housing Authority, Dept. of Children and Family Services, the County Welfare Department, Neighborhood Youth Corps, Division of Juvenile Corrections and others in order to use their services to help families' needs. The field representatives make many home visits to compile social histories so that they and the teachers will have a better understanding of a child's enviornment (teachers have visited many homes also, just to get to know parents better). These visits usually result in a more positive attitude of the parents toward school and teacher toward student, etc. It is a way of bringing the school closer to the community, and allows people to know the school staff cares about the future of their children. Without the ombudsman team this communication would scarcely be possible.

The community school program at Washington was a three-year experiment which ended this June it is hoped that the program will be continued and expanded on a permanent basis by the school board.

Although no controlled study has been made, there has been real progress in talent retrieval, more students have stayed in school, serious behavior problems and absenteeism have lessened. Students take more pride in themselves and their scholastic achievement. Staff morale has improved and teacher turnover has decreased. There are still many difficulties and challenges but we believe we have the means of making positive changes.

Fairfax County, Virginia

Mrs. Louise Murphy------------------------Supervisor of Employee Realtions
(Fairfax has 6500 professionals,
150,000 students, and is approximately
15th in size in the country.)

Mrs. Murphy is not an ombudsman. Her job is to handle the complaints of teacher against administrator and vice versa. She attempts to assume an impartial role; she looks at the problem and tries to bring the parties together at the lowest level, often the school. She is at the Central Office and reports to the Director of Employee Relations. She gets the problems just before the grievance stage. She works closely with the Fairfax Education Association, the teachers' organization, and with the blue collar organization. Mrs. Murphy also sits on formal negotiation teams. She oversees the employee advisory councils which serve as channels of information and communication as well as negotiation teams for personnel. Mrs. Murphy reports that as a result of this system Fairfax has fewer teacher grievances and demands than many school systems.

The problems Mrs, Murphy deals with include problem teachers, who she tries to help, and other, more direct counseling. She also deals with other labor problems and could be construed as a negotiator who tries to solve problems before formal negotiation procedures are necessary. It makes sense, then, that the system has fewer formal grievances. In order to do this job, impartiality is important but difficult, since Mrs. Murphy reports to the School Administration, She has been in the position only a month. She was Director of Elementary Personnel before moving to her present job.

The Supervisor of Employee Relations appears to provide a place for both teacher and system redress without using formal grievance procedures. It works probably because there is a teachers' association and a school system, each with power, who solve their small problems this way rather than through bargaining. Fairfax has nothing for parent or student complaints beyond traditional channels. The consumer has to go to the principal or area superintendent to pursue a grievance.

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Footnotes to Appendix

1 Cochran, Leslie H. "An Ombudsman for Urban Schools." Bulletin of the National Association of Secondary School Principals, 53: 57-64, March 1969.

2 "Initially the civil services regarded the innovation with suspicion, but it has come to view the office as a safeguard against wild allegations and innuendoes." from "Ombudsman is Making a Big Hit in New Zealand," New York Times, August 25, 1968, p.6.

3 Greason, Samuel, Inter-Departmental Memo to County Executive Eugene H. Nickerson, in Anderson, Stanley V. Ombudsman Papers: American Experience and Proposals. Institute of Governmental Studies. University of California, Berkeley, p.152.

4 ERS Information Aid, No. 4, August 1970, ERS, Washington, D.C.

5 The Montgomery County Ombudsman's jurisdiction was later expanded to include student and parent grievances.

6 There are also many examples of "ombudsmen" in colleges and universities. These have been well-described and documented elsewhere, however, and need not be discussed here. See, e.g., Herbert London (NYU), "Underground Notes from a Campus Ombudsman," Journal of Higher Education, 41: 350-64, May 1970, Howard Ray Rowland (Michigan State), "The Campus Ombudsman: An Emerging Role," Educational Record, 50: 442-448 (1969), and James D. Rust (Michigan State), "A Campus Ombudsman Looks at his Job," in Stanley V. Anderson, Ed., Ombudsman Papers (Berkeley, California: Institute of Governmental Studies, 1969).

ADMINISTRATIVE REGULATION OF PUBLIC SCHOOLS

This memorandum was requested as part of a study conducted for the Office of Economic Opportunity. It assumes the premise that public schools are less sensitive than they should be to the needs and wishes of the consumers of educational services. The question asked is whether our experience with administrative regulation in other fields suggests means of regulating public schools to make them more sensitive. The answer must be that more effective regulation of the schools is possible, but at a cost that some will be reluctant to pay.

In administration, as in architecture, form should follow function. It is therefore necessary to identify the goals of regulation with as much particularity as possible before designing forms and processes. If there is a problem requiring new or additional regulation of the schools, it must lie in the deficiencies of the professionals who, for the most part, presently make and implement our educational policy. More regulation might be justified if it is assumed that the professionals are prone to indulge their own desires and convenience at the expense of the consumer. It is, indeed, quite possible that some of the features of the educational process which are most comfortable to professionals may tend to reinforce class distinctions and restrict social mobility. On the basis of such an assumption, it is reasonable to contemplate possible forms of additional regulation. In doing so, however, it is important to keep in mind the fact that the professionals may themselves be the most effective change agents. Processes which encumber them may, in the end, be counterproductive.

Public schools are not now unregulated. Indeed, there are tiers of administrative agencies now regulating public schools in numerous ways. To the extent that those agencies are deficient as constraints on professional judgments, their deficiencies are partly the result of deliberate policy at all levels. The United States Office of Education has limited regulatory powers; even these powers are often exercised diffidently because of a realistic fear that greater vigor would bring down the wrath of Congress. A somewhat similar situation exists with respect to most state departments of education. At the local level to which the state and federal agencies usually defer, there is a marked tendency of local boards to attempt very little control over the professional staff. Like many regulatory agencies, they have usually gone into partnership with the regulated. For the most part, this has been regarded as a good thing to do. In any event, the traditional pattern of organization of the local board has left it dependent on the professional staff for the formulation of policy and for self-investigation.

A community and its local board could resolve to impose a more demanding system of controls on its professionals, if it were so inclined. There is, therefore, no reason to consider at this time the possible creation of new regulatory agencies. If there is a will, there are ways. There is at most a need to consider the ways which might be employed to make a professional educational administration more accountable.

More effective accountability would require a substantially heavier commitment of energy by board members or by others outside the structure of the school administration. Such manpower might be obtained and deployed in a number of ways:

1. The most direct method would be to offer substantial pay to board members so that they could devote more time to school business. A variation on this scheme might be to establish the presiding officer of the Board as a full-time position.

2. Similarly, each board member could be supplied with independent staff assistance. This might include the part-time services of university or high school students, or of teachers in or out of the school system, or of parents or other citizens. Such a staff might be paid or volunteer or both.

3. Such staff support could be centralized. Thus, the board might create one or more offices in addition to the superintendency which report directly to the board. These officers might be professional or non-professional, full or part time, or might include outside consultants serving ad hoc.

4. The board can create additional committees or commissions whose volunteer members might supply some of the needed attention.

The relative merits of each of these approaches depends on the size of the operation and the availability of personnel. But it also depends on the kind of regulation which the board seeks to impose. One approach is to await complaints about professional behavior or other aspects of the program and to use the process of dispute resolution as an instrument of accountability. A second approach is to monitor the operation of the school system without awaiting grievance, conducting routine investigations to identify shortcomings. A third approach is to establish an independent capacity to formulate educational policy without reliance on the professional administrator. These approaches are not exclusive of one another and a board that is thoroughly committed to the idea of accountability might attempt all three. Each requires a somewhat different kind of talent and energy.

1. DISPUTE RESOLUTION. This is, of course, an unavoidable role for local boards. For this reason, it is the easiest approach to the problem. On the other hand, few boards have actually used such occasions as opportunities for evaluating professional work. The traditional response is for the board to rally around the embattled authority figure, giving short shrift to the grievant. To some extent, this is a result of the authoritarian instincts of board members. But it is also the result of a very normal behavior pattern; board members have on-going relations with the superintendent and his administrators which cut deeply into their capacity to make detached judgments in contentious circumstances. It is for such reasons that in-house investigations are always suspect. If a local board wants to avoid its own disability in this regard, it would be useful to attend to the lessons of general administrative practice, which suggests the virtue of severing the fact-finding task from the others so that it can be performed by those who have no on-going relationship with any of the parties to a dispute.

Two methods of externalizing fact-finding merit consideration: a grievance officer or ombudsman, and a formal tribunal. The term "ombudsman" is loosely employed, but has perhaps become a general term to describe an official who is outside the system. In the school setting, such an official would report directly to the Board. He could serve as an advocate for aggrieved parties inside the administration, as an informal investigator and adjuster. He need not be full time, although his other duties should not impair his independence, either in reality or appearance. He should have his own channels of communication, as well as access to all information available to the administration. He need not be a professional educator, and might benefit from deep roots in the community. A variation on this design might introduce many part-time ombudsmen, perhaps one for every school; such officials might have better community support and independence, but much less status within the educational establishment. The choice would seem to depend on local conditions and the availability of suitable personnel. Either method could provide a measure of accountability.

A board with a deeper commitment to accountability might choose to go further by establishing a more formal process. Additional formality is constitutionally required for some very important board actions, such as expulsions. It would serve the stated goal to broaden the use of formal proceedings, making them available in many grievance situations. The cost of such proceedings in time, money, and heartache is probably too great to justify an entirely free and open forum. But reasonable access could be provided to a process which would assure detached judgment sufficient to implement a policy making professional staff and administrators accountable to aggrieved parties. The model for such a process can be seen in most state or federal agencies which utilize external and independent hearing examiners to make fact findings which used as a basis for regulatory action. It would be appropriate for state boards of education to provide such professional services to local boards. But the position could be filled locally, probably on a part-time basis in all but the largest districts. The examiner or hearing officer might be a young attorney, or a law student, or any mature and sensible person with experience in the conduct of contentious proceedings. If there is reason to doubt the acceptability of such professional fact finding, the process could be blended with amateurism by making the hearing officer a part of a larger tribunal which would include randomly selected laymen. Perhaps a five-member tribunal might include a student, a teacher, a parent, and an administrator, each randomly selected from a list supplied by the appropriate constituency.

In going a step further, a local board might undertake to provide counsel in such formal proceedings. This is never legally required in administrative proceedings and is not likely to be economic, unless perhaps law students are used. In communities which have such a resource available, a single roster of mature and qualified students might be used to supply not only the hearing officer or chairman of the tribunal, but also counsel for both sides.

In any event, the formal proceeding should result in a written finding based on recorded evidence. There should be a right to cross-examine adverse witnesses; to have access to school records; to have the cooperation and testimony of all students and employees; and to effective notice. State administrative practice in "contested cases" abounds with models for such a process.

Findings made by such a body would provide an adequate basis, not only for major discipline for students, but also for censure or minor penalties to be imposed on teachers or administrators found to be guilty of neglect. Such findings might be included in personnel records. An accumulation of adverse rulings might provide a basis for a tenure proceeding conducted in conformity with state tenure laws.

The court and the ombudsman are not exclusive of one another. A board might elect to have both. It would be possible to merge the two functions, making the ombudsman also the hearing officer, but this would place added strain on both functions. As the ombudsman participates in the negotiation stage, he weakens his detachment and is less qualified for the judicial role.

2. OPERATIONS MONITORING. The foregoing schemes might be regarded as too modest because of their dependency on aggrieved parties to supply a moving oar. It may be that the kinds of professional failings which are of concern are more often acts of omission. The injured consumer might never be aware of his injury or deprivation. If this is so, then it would be appropriate to consider other alternatives which would subject the professional administration to a more continuous and searching examination. This approach also offers the advantage that the more serene atmosphere of routine investigation will be more conducive to easier professional acceptance of change. On the other hand, there is no doubt that this approach is far more demanding of energy and talent than that of dispute resolution. And it is ultimately more threatening to the status of the administration.

Routine investigation might be conducted by volunteer committees. In general, this is an ineffective means of monitoring the professional operation. Such committees are necessarily composed of citizens who have even less time, energy, and knowledge than board members. They are rarely a match for the professional staff and tend to be co-opted. Indeed, the volunteer committee is on effective means for the professional administration to resist control by the board. By securing the approval of such a group of citizens, the administration can often immunize its action from penetrating criticism by board members. Nevertheless, it may be possible for such a group to function effectively if it has an identifiable position and constituency. Thus, a Black Commission, composed largely of blacks, and charged with the task of monitoring the schools' operations from the black viewpoint, may have some reasonable prospect for effective service. Similarly, localized committees of parents, students, and teachers might serve with some effect as monitors of particular schools. But even these groups would be heavily dependent on one or two members who were willing to make a heavy investment in its work. Otherwise, it, too, will quickly become dependent on the administration for information and ideas.

A board having a stronger commitment to accountability might apply other kinds of manpower to the task. It might well consider the possibility of providing each board member with additional staff assistance. The purpose would be to enlarge each board member's information system so that he would be less dependent on the administration for the data needed to evaluate its performance. Teachers, parents, and students might be appointed to perform this role; they might be paid or they might serve as volunteers. The large question about this method of staffing is whether local board members would have the time and energy to exploit the resource. Full benefit would not be attained unless the board member met regularly with his staff and gave leadership to their efforts. In order to obtain that level of effort from board members, it might be necessary to pay them a substantial fee. It is not clear what the consequences of that would be. It is possible that the increase in the time demands of the job would, over time, impair the quality of the board membership. Only those with time to spare would be willing to undertake it.

A board committed to effective monitoring would not be likely to achieve satisfaction by either of these means. Effective continuity would require at least one officer who can apply all or most of his time to the job of being a shadow or anti-superintendent. He could be the ombudsman, as well, but his function is larger and probably requires a broader title. He might be called the Monitor, the Visitor, or the Inspector of schools. If not a professional educator himself, he would have to become intimately familiar with a wide range of problems. He could be a lawyer; in some ways, the closest analogues to the office would be committee counsel in Congress. It could be very useful if he were a member of the board. He might be supported by a staff. His work would be similar to that performed by educational accrediting associations, but quite different in the perspective which he would be expected to apply. Those associations, it may be observed, have long since become the preserves of professional administrators; at their worst, they can become conspiratorial, and they are seldom critical of administrators. Depending on the skill, audacity, and imagination of this official, the professional staff might be made very nearly fully accountable, in the sense that all of their possible failings might be probed.

3. POLICY FORMULATION. It is a familiar rubric that boards make policy. In fact, that is the task which it is most difficult for a board to perform. To be sure, all boards frequently engage in the making of policy declarations. But policy originates within the professional staff. It is drafted by the administration, but may in some cases reflect a value judgment that is predominantly that of the teachers. The real policy role of the board has been to prevent the professionals from proclaiming goals which might be unacceptable to the community.

If a board is very serious, indeed, about liberating itself from the effects of self-serving professionalism, it might undertake to develop an independent capacity to make policy. This would require a further step in the direction of a separation of powers, a drawing of more distinct lines between the legislative and executive functions. If an independent legislative function were to be performed well, local boards would have to become far more sophisticated than most now are with respect to current developments in the practice and study of education. To some extent, this competence might be supplied by staff support. University students in the field of education might be especially suitable and available for this purpose. They might serve individual board members, or as part of a central staff. To some extent, the competence might be supplied by the Monitor or some other official associated with him. This approach would be particularly amenable to the use of the occasional expert.

Probably more important than a staff capability would be the development of a constituency for particular policy positions. Even a very well informed board member is poorly situated to develop support for his policy when his views are advanced as his alone. In contrast, the superintendent makes recommendations which carry the weight of the professional staff. Other board members are likely to defer to the superintendent when his views on policy conflict with those of a single board member, even despite inclinations to the contrary.

General administrative practice again offers a model for school board policy-making. The general tradition would require that every administrative policy recommendation be published in full, with abundant opportunity for all interested parties to study and comment on it. In this way, alternative proposals are developed and explored. There is much variety in the local practice in this respect, but very few boards are as open handed in their policy-making procedures as the law would require of a comparable state agency. There would be very little point in making such a change unless identifiable constituencies would be capable of developing coherent proposals which would be presented with identifiable group support. How can this be accomplished? It would be convenient to suppose that student councils, parent organizations, and other community groups could supply the input needed to balance the professional recommendation. The problem, once again, is that such groups tend to be even more disabled than the board to cope with professional expertise. This is especially true of parent or student organizations; such groups are conducted on the basis of an internal politics which is seldom realistically issue-oriented; as a consequence, they represent no constituency. This is less true of an organization such as a Black Commission, which has a more coherent view to express. The difficulty might be helped some by the creation of ad hoc groups organized to try to marshall community support for particular policies. One must, however, be pessimistic about the ability of local school boards to establish better procedures for testing administrative policy recommendations.

Perhaps the only change which might strengthen the policy-making role of the local board would be a deliberate increase in the level of partisanship in school politics. The tradition of non-partisanship which abides in most districts tends to weaken the relationship between board members and their constituencies. Members selected on the basis of partisan statements about educational policy would be better equipped to intervene against the weight of professional judgment because they would be more closely bound to one another. The idea that partisanship is impure and unsuited to the lofty business of schools is probably too deeply entrenched to be successfully challenged at this time.

Finally, it should be observed that any policy which a local board might initiate over internal opposition would be exposed to grave hazards at the bargaining table. Almost any significant policy affects the working conditions of teachers and must, therefore, be negotiated. All things considered, the disability of local boards as policy-makers is fundamental. Educational policy almost inevitably originates with the professionals. Some leadership can be provided, but there is little to be gained by an effort to coerce an embrace of values externally selected.

CONCLUSIONS AND RECOMMENDATIONS. On the basis of this analysis, one might come to the surprising conclusion that local boards should leave educational policy-making to the professionals, contenting themselves with the limited and negative role of withholding approval of unacceptable policy recommendations. Indeed, given the limitations on the wisdom of local boards, it may be the wisest personnel practice to give the professional staff a wide freedom to establish its own goals and processes as long as they are reasonable, even if it were feasible to do otherwise.

Constructive results seem more likely to accrue from a systematic effort to monitor the operations of the schools as they related to the stated goals and policies largely selected by the professionals themselves. There would be a price to be paid in the cordiality of some internal relationships. Most superintendents could be expected to take profound offense at the suggestion of an anti-superintendent staff which would seek out his mistakes and the mistakes of his associates. On the other hand, some of the best administrators might welcome such an examination of their work. Many educational relationships are now impaired by the current epidemic of paranoia. An effective system of accountability might relax some unjustified fears and suspicions.

At the least, local boards ought to respond more creatively to grievances. Good sense requires recognition that authority figures who are not accountable to those who are aggrieved by their actions carry less moral force than those who expose themselves to a fair examination by others. The idea that moral authority can be reinforced by rejecting all appeals is obsolete. Certainly, the ideal of professionalism now so vigorously pursued by educators does not require immunity from external criticism. Moreover, a sound system of internal accounting is the only alternative to more frequent intervention by external officials, especially courts. Accordingly, it would seem to be an appropriate use of O.E.O. resources to encourage local boards to develop internal machinery for dispute resolution such as ombudsmen and formal hearing procedures. Perhaps some might be encouraged to go further and establish an official Monitor, or at least to provide some staff support for individual board members willing to devote themselves to the monitoring task.

Even as this suggestion is made, it should be accompanied by a warning against excessive expectations. No mere process of accountability will shape fundamental changes in the quality and character of the educational service provided to children. In the final analysis, that quality and character will be derived from the quality of the human resources applied to the task.

POSTSCRIPT. I have a special interest in trying to develop the use of hearing officers as described above and would welcome OEO support for that enterprise. The Ann Arbor Public Schools are served by an ombudsman and a Black Commission. Attention is now being given to the possible development of staff support for individual board members. If you or OEO would like to support research to evaluate our experiences, I am sure that our Research Office would be receptive.

Appendix D: JUDICIAL INVOLVEMENT IN PUBLIC SCHOOLING

Judicial review of school affairs is not new. Courts have long enforced state laws compelling attendance and grappled with reconciling school policy and practice with constitutional rights. Historically, this judicial involvement in school affairs has been relatively rare and far from constant. But since Brown v. Bd. of Education, 347 U.S. 483 (1954) /Brown I/, public school officials have been challenged increasingly in courts by families intent on securing for themselves various "rights" and interests in public schooling.

The thrust of these suits can be divided into four rough categories. First, minority-group children -- originally black, increasingly yellow, red, brown, and sometimes just poor -- seek to end discrimination in the public schools. These suits concentrate on expanding the constitutional prohibition of discrimination and eliminating overt and covert practices which deny to minority children full access to the benefits of public education. Second, resource allocation suits challenge the inequitable division of educational resources within and between school districts, the misallocation of funds under various Federal and state compensatory programs, and school fees collected in the face of state provisions for "free" public schooling. Third, suits have been brought to protect the fundamental civil liberties of children in the public schools. These suits argue that children have certain constitutionally protected rights in the schoolhouse -- namely, free speech and expression, the right to publish and distribute without prior restraint, privacy and freedom from unreasonable search and seizure, access to personal information and control over its dissemination, and a full measure of due process before being labeled and sorted or denied a vital school benefit. These claims, of course, are often modified to fit the context of the particular child, school, and activity; but infringement of the child's rights is argued to be unconstitutional in the absence of a compelling justification or a material disruption in the educational process. Fourth, on the basis of both Federal and state law, many cases challenge the process and result of school classification practices -- the tracking, grouping, exclusion, promotion, and labeling of students by school officials.

In this appendix we will briefly examine the substantive rules of decision emerging from each area; the nature and effect of such judicial involvement in school affairs; and what this suggests about resort to a system of legal redress to protect the family's interest in public schooling. At the outset it is important to remember that court actions should constitute but a small fraction of disputes resolved in a well-functioning system of legal redress. Once the threat of judicial action becomes established, and reasonably certain standards of decision-making are set, most controversies should be settled "voluntarily" by the parties if they have knowledgeable advocacy assistance. In many areas of school disputes the threat of judicial action and emergant standards of decision-making exist. What is lacking is the means -- advocacy assistance for families -- to capitalize on that threat and those standards to effect a system of legal redress.

1. *Discrimination Against and Segregation of Minorities in Schools*

Seventeen years after *Brown I*, when the Supreme Court ruled explicitly that state-imposed segregation in public schools is unconstitutional, black, brown, yellow and red children are still prevented from attending "white" or "Anglo" schools in all areas of this country by a variety of "state actions".[1] The string of cases following *Brown II*[2] -- *Cooper*,[3] *Goss*,[4] *Prince Edward County*,[5] *Monroe*,[6] *Green*,[7] *Alex[illegible]der*,[8] *Swann*[9] -- is a testament to the effective resistance and persistent evasions by the school officials who represent dominant white majorities and control pupil and teacher assignment. With *Swann*, and a spate of recent decisions holding existing school segregation in the North and West to be unconstitutional,[10] there are some indications that the school desegretation movement is finally reaching a take-off point. While the flexibility of "all deliberate speed" authorized by *Brown II* has too long permitted racial separatists to avoid the broad commands of *Brown I*, more and more people are concluding that discrimination on the basis of race is morally indefensible.[11] Intensive efforts by civil rights lawyers and litigants have combined with lessening resistance by school officials to judicial decrees to make integration a forseeable possibility in many places. Whether desegregation is presently required of all school systems is not as important as what is now already clear: courts stand ready to eradicate racial discrimination -- direct or indirect, subtle or blatant -- in our system of public schooling.

There are two basic constitutional theories used to attack school segregation under the Equal Protection Clause. The first looks at educational resources, inputs and outcomes in predominantly "white" schools as compared to "black" schools, and searches for a denial of "equal educational opportunity." Such search has proven rather fruitless: it relies on a social-science base which has not been able to relate educational inputs to educational outputs in any meaningful way. Such data seems a rather flimsy foundation on which to base the constitutional rights of minority children.[12]

The second theory simply asserts that racial segregation in public schools is morally wrong, a denial of equal protection by public authorities acting under color of state law. As stated by Judge Sobeloff:

> /The philosophical basis for desegregation/ is not founded upon the concept that white children are a precious resource which should be fairly apportioned. It is not, as some education experts suggest, because black children will be improved by association with their betters. Certainly it is hoped that under integration members of each race will benefit from unfettered contact with their peers. But school segregation is forbidden simply because its perpetuation is a living insult to black children and immeasurably taints the education they receive. This is the precise lesson of Brown.[13]

But even if school segregation is a "living insult", it probably offends the Constitution only if it is "state-imposed".[14] In Swann the Supreme Court made clear that it will no longer tolerate the existence of any vestiges of state-imposed segregation in formerly dual school systems. The Court, however, has yet to face squarely the problem of defining the responsibilities of authorities in school systems which were never explicitly dual but were nonetheless segregated. In several recent cases plaintiffs have made the following arguments about such segregation:

1) Since both racial equality and education are fundamental interests in our constitutional system, the existence of identifiable "black" and "white" public schools, absent compelling justification, is a denial of equal protection under the 14th Amendment.
2) If in the past there has been affirmatively-imposed segregation, the state must prove that its reasons for maintaining segregated schools are compelling.
3) Even if the state can offer a compelling interest justifying school segregation, that interest must be promoted by the least segregatory alternative available.

Reduced to its simplest form, the argument is that all segregation is _prima_ _facie_ _de_ _jure_ because the state assigns students to public elementary and secondary schools, which _prima_ _facie_ case cannot be rebutted by smugly "rational" rejoinders.

The usual justification offered by school boards is that segregation resulting from residential patterns cannot be avoided without abolishing the neighborhood school system. On its face, this argument may appear "compelling" because neighborhood schools arguably are important to the community and many parents prefer that their children attend school close to home. Upon further examination, however, it is frequently evident that various "state" actions, have arranged the "neighborhood" and its schools to create and perpetuate segregation. School zones, for example, are often drawn to reinforce residential segregation. So-called "optional school zones" are frequently created to allow whites living in mixed areas to flee "black" schools in favor of "white" schools. Transportation practices and the use of school facilities (over-and under-crowding) often reflect the racial bias underlying pupil assignments.

While the courts ought to scrutinize carefully all these subterfuges, leading reformers have argued that the "neighborhood school" defense should never be allowed if residential patterns themselves result from some form of prior discriminatory state action. Under such circumstances the state is obligated to adopt assignment practices to counteract the evils of racial discrimination in housing, rather than reinforce them. It cannot hide behind the shibboleth of "governmental neutrality".[15]

Swann provides an indication that the courts are serious about eradicating segregation once and for all. Judicially mandated desegregation, however, has been marked by the inconsistency, lack of predictability, and failure of enforcement of judicial decrees. Because many judges have not decided where de facto ends and de jure begins, too many precedents have been factually distinguished instead of overruled or followed. Plaintiffs and school authorities cannot know with certainty what the Constitution, or the nearest judicial forum, are likely to command. As long as the law remains unclear, members of the minority community and school authorites may continue to wage their battles in court. The question is whether the law will be clarified, so that the battle may move to the advocates' offices.

Discrimination in the assignment of students and faculty to schools is, however, only one type of discrimination which may exist. Racial discrimination within schools by classroom assignment -- through tracking, sex segregation, or the blatant maintenance of separate classrooms for black and white -- is being examined and attacked by some courts.[16] Racially discriminatory discipline and the use of symbols of white supremacy by public school officials will soon face court challenges.[17] In public schools, the nub of the controlling rule should be clear: discrimination against racial minorities is simply impermissible.

In the face of these court actions, some school authorities are beginning to realize and accept that proposition. Unfortunately, many other school officials and many "consumers" of public educational services do not; and others -- especially members of minority groups -- suffer without knowledge of their rights or the means to enforce them. It is naive to think that providing legal and advocacy assistance to all families would quickly or easily end racial discrimination in the public schools. Such assistance, however, could inform black and white families of what is at stake, what is the law, and how it can be enforced. Armed with such knowledge and with legal assistance, minority-group families could more easily press for relief, and majority-group families and school authorities would be more likely to settle racial grievances.[18]

In many respects racial discrimination belongs in the category of consumer problems which we have labeled "intractable". Yet if an effective system of legal assistance for all families can be set up, settlements may occur more frequently and amicably without resort to court battles. In short, it is not unreasonable to hope that as judicial standards for decisions become clearer, the system of legal redress will mature apace. That will only be possible, however, if legal assistance is available to all families and not just to school boards.

2. Resource Allocation

From the failure of Brown and its progeny to bring racial integration to the public schools, many reformers in the mid-1960's turned their attention to equalizing the resources given to schools in order to ensure at least equal facilities for schools with predominantly black and poor enrollments. Since that time, legal challenges to unequal resource allocation have concentrated upon the unfairness in the state's requiring education of all, while offering the white and rich more resources than the black and the poor. Not all resource allocation cases, however, rely upon the "equal protection" clause. Several suits challenge the misallocation of funds by school officials under various federal and state compensatory programs; others challenge the practice of charging fees for school activities in the face of state laws requiring that public schooling be free.

It is important to distinguish between the distribution of resources within a single district and the distribution between districts. The former offers less resistance to constitutional attack because there is no legitimate state interest which can justify intra-district inequalities that systematically discriminate against poor or black children. In Hobson vs. Hansen, Judge Skelly Wright held that the "equal" aspect of the "separate-but-equal" doctrine survived Brown and that per pupil instructional expenditures within a single district must be substantially equalized among all schools.[19]

Equalizing resources among all districts in the state, however, is a much more formidable task. The history of American education reveals a high regard for local district autonomy; if inter-district equalization means that schools will no longer be run locally, communities throughout the country may react with bitterness and hostility. Yet the inequalities produced by local property-tax financing are often substantial and, in effect, reward the rich for their wealth and penalize the poor for their poverty.[20]

As in desegregation cases, challenges to inter-district resource allocation are not likely to succeed if the plaintiff must prove a denial of "equal educational opportunity": social-science data provides too shaky a foundation for judicial declaration and supervision. In McInnes v. Shapiro[21] the sanctity of local property-tax financing withstood just such an attack; the court found the issue of "need" raised by the complaint to be non-justiciable. The assertion of differential education "needs" for the children provided no standard for decision manageable by educational experts, let alone judges.

More recent decisions,[22] however, have accepted the argument that inequitable allocation of educational resources is ethically unfair and insults and injures those discriminated against. Since the state forces children to spend a large portion of their childhood in schools, state officials should treat all citizens even-handedly, whether or not increased resources actually facilitate the development of cognitive skills. State-imposed inequalities in educational expenditures are invidious when an identifiable minority group consistently receives fewer dollars.

Whether or not a court will accept this interpretation of the Equal Protection Clause may depend upon how important the judiciary believes the plaintiff's injury to be. If the court agrees that education is a fundamental interest and that wealth discrimination is a "suspect" classification, then under the Fourteenth Amendment, the state will have to provide a compelling justification for its method of resource allocation. School boards will insist that wealth should not be considered a "suspect classification" because the courts are unable to extend the concept of equality to every disparity between rich and poor.[23] They will also claim that "education" per se has never been considered a fundamental interest for constitutional purposes, that the state need only show a rational purpose for "giving" different school districts different resources, and that preserving the independence of the local district through local property-tax financing is rationally related to the state's legitimate interest in bringing government closer to the people.

Relevant to the court's resolution of these questions will be the court's conception of its own role in the area of resource allocation. There are, of course, some disadvantages to settling this kind of dispute by constitutional mandate. First, aside from the notion that resource inequalities are inherently wrong, there is no clear rationale for judicial intervention. Perhaps more importantly, re-shuffling resources within the educational bureaucracy may not benefit the poor; it may only grease the palms of teachers and administrators of poor children. Only by increasing the role of parents and children in the decision-making process, something which cannot be accomplished by judicial fiat, will the redistribution of resources among school districts have any substantial effect upon the resources children actually get in school.[24]

On the other hand, there are also strong arguments in favor of judicial resolution of the problems posed by resource inequalities. Unlike Brown, for example, enforcement would be facilitated by the simplicity of the decree. Most crucially, it is vital for judges to reaffirm the moral imperative of equal treatment, particularly where existing disparities are large, continuing, and discriminate against an identifiable minority. That there exist educational inputs which are not subject to precise measurement is no reason to deny equalization where it can be effected without subverting state efforts to support other legitimate state interests; it is the judiciary which is entrusted with the responsibility for guaranteeing equal justice under law.

If the Court were to hold unconstitutional all methods of resource allocation which discriminate on the basis of variations in wealth between school districts, legislatures could be allowed broad leeway in their reform of school financing:[25] not only could the administration of schools be left entirely to local school districts, but a variety of non-discriminatory local financing arrangements are available. Moreover, this might serve as a catalyst for community involvement and protest. The vacuum between the death of the old system of school taxing and the birth of a new one may provide a springboard for political organization and innovative action.

Another way to remedy some resource inequalities is to ensure that moneys allocated for the benefit of the poor under various compensatory programs are distributed accordingly. For example, the federal government, recognizing that the states are either unable or unwilling to cope with the educational problems of the poor, has enacted Title I of the Elementary and Secondary Education Act. It provides federal funds to areas with a high concentration of low-income families. Congress intended that these funds be directed at poor children with special educational needs; that intent often remains unrealized. Such compensatory programs are supposed to provide supplemental resources to educationally deprived children. Instead, they are often used by local school systems to supplant regular funds, and, in effect, serve to reward districts for discrimination. In other instances, local school officials have not "targeted" the additional funds for poor children; they simply add the money to their treasuries and spend it as general funds. In both cases school officials violate clear statutory commands. In such circumstances, if injured families have legal assistance, they can use a system of legal redress to gain their statutorily declared due.[26]

Finally, challenges are being made against the practice of charging activity fees in school. Such fees often hurt the poor directly; where they cannot pay the fee, they are effectively excluded from participation. For example, where a fee is charged to purchase textbooks for elementary school children, it operates to prevent children who can't pay from participating in their school in any meaningful way. In effect, this is an invidious discrimination on the basis of wealth, arguably a deprivation of constitutional dimensions.[27] It surely violates state laws that require public schooling to be "free".[28]

3. Student Civil Liberties

Although court resolution of disputes concerning school authority and individual liberty is not new, recently students have increasingly challenged arbitrary and capricious school rules in court. While "hair length" cases have received the most notoriety, students have brought suits contesting almost every conceivable infringement upon their free expression. Students have asserted that they have a Constitutionally protected right to wear armbands or buttons, a right to publish what they please in newspapers without prior restraints, and a right to assemble and demonstrate without unreasonable restrictions.

Although the legal questions presented in these cases are difficult to resolve, courts have long struck down school practices which violate fundamental civil liberties. In Meyer v. Nebraska,[29] for example, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment prevents states from forbidding the teaching of the German language to young students. Rejecting the state's argument that the statute in question served a rational purpose -- to promote civil cohesiveness and combat the "baneful effect" of foreign influence -- the Court found that it unconstitutionally interfered with the liberty of student, teacher, and parent. By a similar analysis, the Court struck down a statutory requirement that all children attend public schools, on the grounds that it unjustifiably deprived families of their liberty to select schooling for their children,[30] and held unconstitutional an Arkansas anti-evolution statute as repugnant to the freedom of religion clause of the First Amendment.[31] The Court also ruled that Bible readings and recitation of the Lord's Prayer in the school constitute too great an entanglement of church and state and prevent the free exercise of religion by those who do not recognize the particular dogma or ritual.[32]

From these cases two principles emerge. On the one hand, the Court generally will not interfere with the comprehensive authority of school officials to prescribe and control conduct in the schools. On the other, the Court will not permit these same officials to violate basic Constitutional rights in the name of efficiency and order. As Justice Jackson stated in West Virginia State Board of Education v. Barnette:

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself, and all of its creatures -- Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.[33]

It is against this background that the courts have been asked to expand the scope of students' rights within the school. The landmark decision of Tinker v. Des Moines Independent Community School District[34] indicates that some of the judiciary will continue to assume an active role. In upholding a student's right to wear an arm band as a form of political dissent, the Court essentially expressed a willingness to restrict school authority more than it had before, even though freedom of speech in school is in part, at least, a question of educational policy. The majority held:

> State-operated schools may not be enclaves of totalitarianism . . . Where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained.

The vagueness of this "material disruption" test shows the difficulty of judicial action effecting civil liberties of students in school. The discretion which Tinker gives school officials and reviewing judges has resulted in mixed protection of students from "totalitarian" rules. Since any schoolman can shout "material disruption", many judges, inclined to bow before official expertise and their belief in the need for school discipline, do not feel, or do not want to feel, that they are competent to intervene. But Tinker has contributed in two significant ways to the development of the "student rights movement." First, it has encouraged students to organize and take collective risks. Even if the state of the law is confused and students cannot predict judicial reactions, many students now believe that they have rights and are willing to assert them. Second it rejected the notions that judges should never review school practices and that school constitutes a time and place where restrictions on speech are always "reasonable". School officials can no longer rely on "expertise" to shield them from legal action when disciplining students for their expressions.

Legal challenges are likely to go beyond traditional First Amendment rights: can a school impose a particular grooming code when dress and appearance are arguably forms of expression and matters of privacy? can a principal search a student's locker without a warrant? if he does, are the fruits of the search inadmissible in a criminal proceeding? or in a school disciplinary proceeding? does the Constitutional right of privacy extend to a student's school files? can unauthorized use of a student's file by the school be grounds for a civil rights action? There are no obvious answers to these questions at this time. The line between an inviolable right and an educational preference is often thin.[35]

Courts, however, must guarantee procedural due process for students in school whenever they are stigmatized by school officials or placed in a fundamentally altered educational status. While educators may argue about whether long hair or armbands are disruptive, exclusion or suspension from school or placement in a special ed, vocational ed, or non-degree program can affect the entire course of a child's life. No person should be subjected to these sanctions in public schools without the effective opportunity for a fair hearing. There are no civil liberties more fundamental than procedural guarantees, and they are no less fundamental merely because the "accused" is inside the schoolhouse.[36]

Yet due process does not mean a hearing in court -- it means a hearing in school. Judges alone cannot ensure the enforcement of a decree. Even if a courtroom is the most appropriate forum for determining what constitutes fair procedure, only a consumer protection device less remote from actual school activities can safeguard students adequately against arbitrarily-imposed sanctions.

4. Classification

As we have suggested, decisions by school officials which classify children have an enormous impact. From the time a child takes his first block-building intelligence test in first grade until he graduates twelve years later (or is excluded or failed prior thereto), he is constantly sorted by educational procedures which will determine his future. At regular intervals he is tested and graded; he is grouped -- both within a classroom and between classes; and he is forever evaluated by teachers, whose recommendations determine whether he will be promoted, placed in special track, and later get a job or into college. Each individual student must have legal redress to guarantee that a few "experts" do not arbitrarily restrict his chances for a happy and productive life.

As in civil liberties cases, no student should be subject to the more serious kinds of classifications without rudimentary procedural safeguards.[37] Before a child is excluded from school because someone thinks he is "uneducable", before he is placed in a special remedial class, or before he is assigned to a low track, he should be entitled to the following due process guarantees: 1) adequate notice of his right to a hearing; 2) right to counsel or other representation; 3) right to present evidence and cross-examine opposing witnesses; 4) right to have any final decision based upon the relation of the evidence to previously-defined standards; and 5) right to have an explanation of the Board's actions in writing.[38] Once again it must be remembered, however, that a court cannot operate in-school hearings, and that fair procedures cannot be guaranteed by the mere existence of a judicial decree. Fair and efficient procedures to hear and resolve these in-school disputes and effective advocacy assistance for the family is critical. Indeed, effective advocacy assistance may not only help families use complaint resolution devices, it may also enable families to pressure all schools to adopt fair procedures without resort to a courtroom.

Legal action can also be taken against school officials if a student's classification constitutes discriminatory state action under the Fourteenth Amendment. Hobson v. Hansen laid down the principle that ability groupings made on the basis of tests standardized to white middle-class children violate the Equal Protection Clause if they relegate black children disproportionately to low tracks which provide no remedial services and escape back to the mainstream of educational and life opportunity.[39]

Tracking often acts as a gate. Children in lower tracks are unable to regain entry to regular classes and ever after are channeled into less advanced classes and ultimately into lower-paying jobs. Unless a school can demonstrate that the tests used to determine initial assignments are fair, a child can claim with some justification that he is also being deprived of his liberty without due process of law.

Substantive Constitutional challenges to classification practices are therefore two-pronged. If those relegated to a low track are largely members of a racial minority, the school's classification system may be "suspect" under the Equal Protection Clause and the state will have to show a compelling justification for it. If there is no prima facie racial discrimination, but the tests or procedures used are unfair, the method of grouping may violate the Due Process Clause. This is not to suggest that the traditional tracking rationale -- "diagnosis, prescription, remedy" -- is always subject to judicial attack; rather, that rationale must be implemented fairly without potential racially discriminatory effects and it must work.[40]

Perhaps the most serious of all school classifications are cases where a child is excluded from school altogether, usually because he is thought to be "uneducable". In addition to due process and equal protection arguments discussed above, the excluded child may also be able to challenge the school's actions on state constitutional grounds. For example, in Utah retarded plaintiffs successfully argued that exclusion from public schools without the provision of an alternative education is inconsistent with the state's constitutional duty to educate "all children."[41] Furthermore, the Federal guarantee of equal protection may prevent public authorities from assigning the "uneducable" to residential institutions without educational facilities or otherwise excluding them from all publicly supported educational opportunity.[42]

Yet the courts can provide only limited protection to students who have been classified unjustly. First, as has been noted, judges are hesitant -- and rightly so -- to involve themselves in school policy decisions. They have neither the time nor the inclination to be school superintendents, and there is a widespread feeling that professionals make better schoolmasters than judges do. Second, since it cannot be proven statistically that classification decision substantially affect later verbal achievement, it is difficult to base judicial intervention on the educational benefit to the child. On the other hand, the effect of classification decisions upon outcomes and life opportunities is so clear that grounds for judicial intervention are available. Third, the ways that schools actually classify students in any way -- exclusion, assignment to special classes, or ability grouping -- are largely unknown; this low visibility makes adequate judicial review difficult. Judges simply cannot delve into school records and make difficult judgments about educational practices unless, as in Hobson or Wolf, the violation of the Constitution or statute is manifest. Fourth, while a judge can strike down an existing method of classification as unconstitutional, he may not be able to enforce any alternative. As a result, unconstitutional tracking patterns are likely to continue, albeit more informally, in the vacuum created by the decision. That is the unfortunate history attached to the landmark Hobson decree.

Perhaps the most important limitation on judicial resolution of classification disputes, however, is that the problem is too vast to be alleviated by courts alone. Inequalities in resource allocation within a state can be eliminated by a single lawsuit, but unfair classifications, like violations of students' civil liberties, occur in every school and every classroom. The fact that one decision declares one form of classification to be unconstitutional may protect no one except the plaintiff who brought the suit. While Tinker encouraged other students to take collective risks in the interests of their civil liberties, there have been few cases after Hobson challenging the constitutionality of tracking procedures, partly because too few parents and children are sufficiently aware of the harmful effects of ability-grouping. This suggests that a few judicial decrees do not a system of legal redress make. Without effective advocacy assistance and information, schools will continue to minister to most families, rather than serve them. Without such assistance, consumers of public education will be in no position to know what to expect, nor how to raise a dispute. Until such assistance is available, families will get not what they deserve, but only what they are given.

5. The Limits of Judicial Intervention in Public Schooling and the Potentials of a System of Legal Redress

Court challenges in each substantive area discussed above attempt to limit the unfettered authority of school officials. But insofar as families lack knowledge of their declared rights and the means to keep schools operating within such broad guidelines, they cannot assert and protect their interests. Coupled with the lack of certainty about the controlling standards in several areas, this means that there is no effective pressure on schools to conform to the burgeoning rules of law which have been declared in the past decade. Until such assistance is available, there can be only sporadic judicial intervention into school affairs to protect particular families from school actions. To understand the limits of this sporadic judicial intervention, we must examine the institutional restrictions inherent in the judicial process.

First, courts are limited to cases brought and prosecuted before them. Until a case is actually brought within a particular court's jurisdiction, no judicial decision is possible; and when a case is brought, the court usually must make a decision.[43]

Second, the judicial process only indirectly engages in a search for truth, Its primary function is the resolution of specific cases and controversies in an adversary context. Often, in school disputes there are different strengths between combatants in terms of the legal resources available to them. The scales of decision are often controlled by these differences in legal resources rather than by the merits (or "truth") of the controversy. Even expert witnesses are part of this adversary process: they usually represent only one side or the other.

Third, the court's view of the facts is primarily limited to whatever the parties present in evidence. The rules of evidence further limit proof; over time these rules have been contrived, ostensibly to protect juries from heresay, irrelevant or prejudicial statements, and other information which some ancient court thought was not "proper". Only a judge's personal knowledge, personal prejudice, personal research, that of his law clerk, and on occasion an amicus curiae brief supplement the basic factual information on which a decision must be made. In short, the courts are in no position to oversee the day-to-day operation of any activity, nor to examine fully the factual bases for many policy determinations and practices.

Fourth, in contrast, legislatures, administrative agencies, school boards, and school administrative staffs possess, in theory, broad investigative powers, broad discretion, considerable capacity to oversee an activity on a regular basis, and the mandate to undertake broad reviews of policies and practices. Although such theoretical distinctions between courts and other public agencies may narrow in the rush of practical affairs, they do inform the conventional wisdom: the third branch should be chary of substituting its own policy judgments for those of properly constituted public authorities, and should afford a presumption of regularity and competence to the actions of public officials. In school matters, where there are few answers about what is educationally correct, courts should avoid determining educational policy and practice unless a clear deprivation of rights is present. In general, courts should eschew substituting their own judgment for that of school authorities.

Fifth, whenever the basis for judicial intervention is the United States Constitution, the decision is reversible only by constitutional amendment, or by a later reversal by the Court. In such situations courts act in the traditional role of protector of the minority from abuse by public authority, which presumably acts on behalf of the majority. But because constitutional decisions are practically irreversible, they must not be made hastily, lest an unwise check on future experimentation be set.

Sixth, the judicial process, with the exception of a few remarkable cases, is generally a slow and deliberate process. Often such deliberation will deny justice and rights which could have been secured had the parties settled their grievances without court action. Finally, it is difficult for any court to alter a general pattern of conduct; with eyes only of the parties and the enforcement power of contempt, the courts often cannot see or prevent violations of their own decrees. It is for all these reasons that reliance on judicial intervention to protect the interests of families in schools is a limited, expensive, time-consuming and often unrewarding proposition.

Yet judicial intervention into school affairs is appropriate for several purposes. The first is to enforce a statute or regulation which is not being implemented by the public school authorities. Here, the Court merely enforces the putative, considered will of the people. Any judicial misinterpretation can be corrected thereafter by the duly-constituted body politic. The second is to cast out the presumption of administrative regularity when there is a pattern of failure in the schools; there comes a time when that failure can no longer be attributed to the children, and schools must begin to bear the burden. The third is to protect minority groups which are substantially under-represented in the political process. Black and poor children have been substantially under-represented in the political process for many years and, by any measure, substantially disadvantaged by the public school system. Claims by these children, therefore, are entitled to close judicial scrutiny. Yet in a very real sense no child is directly represented in the political and administrative processes which regulate life in school. For these reasons we have witnessed in the past decade a reversal of the presumptions of virtual non-citizenship for the child in school.

Yet the reversal is far from complete, and in practice, for several reasons, there has been no reversal at all. First, effective access to the courts is not available to all families. School authorities possess resources to purchase considerable legal advice and trial preparation. Individual families, and even groups of families, lack the money and often the time necessary to bring a controversy to the courtroom. The poor, who are most disadvantaged in the political and school processes, are also the most disadvantaged in securing legal assistance. Local legal service offices and a few backup centers have barely narrowed this gap. And for the "near-poor", which includes most children and their parents, resort to the judiciary for protection is practically unavailable. At the same time, if access to courts was made considerably easier for all consumers of public education, the Courts themselves might attempt to close the door to judicially dispensed justice. No process of judicial review and examination can long endure unless most disputes are settled by the adversaries before they reach court.

Second, any judicial declaration of right and wrong extends only to the relationship between the parties before the court (and there is no assurance that it will be implemented by the defendant school authorities). Even if a broad constitutional principle is established by a declaration, its application in similar circumstances is too often a matter of endless litigation, not good-faith compliance by school authorities. Consider the contrast between the relatively rapid implementation of reapportionment and the difficulties in enforcing school desegregation and the school prayer ban. Once the standard of "one man, one vote" was set, something close to compliance followed quickly in all states.[44] But desegregation decisions failed to set such a certain standard, and compliance still seems far away. On the other hand, the school prayer ban was at least as direct and certainly more simple than the reapportionment decree, yet compliance has not come in many schools. We can speculate, then, that there are at least three factors which militate against compliance with any judicial decree directed against schools: (1) many decisions do not permit a clear and simple statement of right and wrong; (2) schools, whether through historic insulation or deeply held beliefs or prejudice, are adept at securing community resistance to judicial intervention; (3) decisions necessarily run against countless administrative officials responsible for countless children and classrooms.

Third, judicial decrees can never be implemented if they require the impossible. For example, a decree designed to increase the quality and intensity of linguistic interaction between mother and child, or between teacher and family, is doomed to failure. Nor can the Court order that the competence of any particular child or group of children be increased by the schools. Such decrees invite non-compliance simply because no one knows how to accomplish such feats. Yet judicial decrees usually must require some school action to ensure their enforcement. The Court will never make a declaration until school authorities have defaulted and violated some child's rights. The decree then requires offending school authorities to provide the child with his rightful due; too often this is like asking the fox to guard the chicken coop.

This analysis of the limitations inherent in the judicial process and especially review of school practices suggests that the courts can play only a limited role in the protection of the family't interest in public education. Yet the courts do exist; until they shut their doors to all school issues we must consider what they can do. For example, the Supreme Court's decision in Brown I was a major statement: it declared that in the public schools -- and by implication in all other public institutions -- a state's attempts to relegate black people to a separate and inferior position are unconstitutional. Compliance with that declaration seemed remote in 1954; yet the statement by the Court that racially separate educational facilities are inherently unequal had a profound influence. Declarations by the Court of basic constitutional principles can play an important role in shaping public notions. The experience with Brown indicates how judicial opinions may inspire or catalyze other action. While it would be wrong to claim that Brown created the civil rights movements of the late fifties and sixties, no doubt the Court's action served to fuel and protect challenges by black people to various discriminatory "state" and private actions.

Judicial decrees may also stimulate political organization by legitimizing action already taken. In Tinker, the Court merely held unconstitutional the expulsion of the Tinker children from school for wearing an armband to protest the Viet Nam War. Since Tinker, students acting as individuals and in groups have shown an increased willingness to assert their rights. While it would be wrong to suggest that Tinker created the student movement, the Tinker decision stands as a declaration that students can act as responsible citizens in the school and survive. No matter how strongly school authorities might wish it otherwise, students often believe and act as if they have constitutionally guaranteed rights on the campus. As a consequence, many school officials have begun to accept the notion that students are citizens and clients in the highest sense of that word -- persons to be served, not ruled.

Tinker does not prove, however, that judicial intervention provides an effective means for protecting children or even organizing students to protect themselves. School authorities have found many informal ways to resist the substance of the decision. Many school officials still view any student opposition to a school rule as an obnoxious attack on their unlimited authority which must be resisted at all costs; as often as not, such resistance by school authorities is vindicated in court decisions which legitimize the role of the school as the ruler of the child. But, once loosed, the principle of student rights is not easily cabined. While resort to the judiciary has not altered the fact that free speech often involves substantial risk to the speaker, the notion that children may have thoughts and expressions independent of the school has been established, if not fully implemented.

Finally, and in our view most importantly, the recent history of judicial involvement can lay the cornerstone for an effective system of legal redress. Although many standards for decision-making are still unclear, present judicial declarations could stand as a credible limitation to school discretion relative to the family's interests. What is lacking are the means for informing families of their legal rights and for assisting families in asserting these rights. It is our belief that the schools themselves should help families understand and assert these rights; for that reason, we have proposed a system for managing complaints within the school (see Chapter II supra). Yet in practice such in-school assistance will not always be sufficient, especially where disputes are of an "intractable" nature, "rights" are arguably in conflict, or the dispute is basically adversary. Under such circumstances, an effective system of legal redress could help resolve most disputes without resort to the courtroom. Through our proposal for and Education Attorney to assist families in advocating their interests, we attempt to transform the recent history of judicial intervention in school affairs into an effective system of legal redress (see Chapter III supra).

Notes

1. For a general discussion of segregation issues, North and South, red, brown, yellow, and black, see 9 *Inequality in Education* (1971).

2. *Brown II*, 349 U.S. 294 (1955)

3. *Cooper v. Aaron*, 358 U.S. 1 (1958)

4. *Goss v. Bd. of Education of City of Knoxville, Tenn.*, 373 U.S. 683 (1963)

5. *Griffin v. Prince Edward County*, 377 U.S. 218 (1964)

6. *Monroe v. Bd. of Commissioners*, 391 U.S. 450 (1968)

7. *Green v. New Kent County*, 391 U.S. 430 (1968)

8. *Alexander v. Holmes County Bd. of Education*, 396 U.S. 19 (1969)

9. *Swann v. Charlotte-Mecklenberg Bd. of Education*, 402 U.S. 1 (1971)

10. *U.S. v. School District 151*, 404 F. 2d 1125 (7th Cir. 1969), on remand, 301 F. Supp. 201 (N.D. Ill. 1969), affd as modified, 432 F.2d 1147 (7th Cir. 1970), *cert. den.* _____U.S._____(1971)

    Spangler v. Pasadena City Bd. of Education, 311 F. Supp. 501 (C.D. Cal. 1970)

    Kelley v. Brown, Civ. No. LV-1146 (D. Nev. Dec. 2, 1970) (Las Vegas)

    Crawford v. Bd. of Education of Los Angeles, Civil No. 822854 (L.A. Super. Ct. May, 1971)

    Davis v. Bd. of City of Pontiac, Inc., 309 F. Supp. 734 (F.D. Mich. 1970), aff'd,________F.2d________(6th Cir. 1971)

    Keyes v. School Dist. No. 1, Denver, Colo., 313 F. Supp. 61 and 90 (D. Colo, 1970), aff'd in part, rev'd in part, ____F.2d __(10th Cir. 1971)

    Johnson v. San Francisco Unified School District,____F. Supp. _____ (N.D. Cal. April 28, 1971)

- *Soria v. Oxnard School District, California*,_____F. Supp. ______ (C.D. Cal., May 12, 1971)

U.S. v. Bd. of School Commissioners of Indianapolis, Ind., ____F. Supp. ____(S.D. Ind., Aug. 18, 1971)

11. The actions of the Board of Education in Clarke County, Georgia, and its subsequent arguments before the Court, may be indicative. The Clarke County School Board voluntarily integrated its schools but were thwarted by the Georgia state courts. In *McDaniel v. Bares*, 915 Ct. 1287 (1971) the Supreme Court completely vindicated the local board and reversed the Georgia Supreme Court.

12. See Cahn, "Jurisprudence," 30 N.Y.U. L. Rev. 150 (1955)

13. *Brunson v. Board of Trustees*, 429 F. 2d. 820 (4th Cir. 1970)

14. One court has argued that all educational institutions, no matter how "private", fulfill a public function and therefore cannot discriminate on the basis of race. *Guillory v. Administrators of Tulane University,* 203 F. Supp. 855 (E.D. La. 1962)

15. See, e.g. *Brewer v. School Bd. of City of Norfolk*, 397 F. 2d 37, 41-42, (4th Cir. 1968)

16. See, e.g. *Lemon v. Bossier Parrish School Bd.*,   F. 2d. (5th Cir., June 17, 1971); *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967); *Johnson v. Jackson Parrish School Bd.*, 423 F. 2d 1055 (5th Cir. 1970).

17. cf. *Caldwell v. Craighead*, 432 F. 2d 213, 225 (6th Cir. 1970) (Edwards, J., dissenting).

18. The point is not that all families -- white and black -- want integrated schools. Many do not. The fact that the majority of both groups now attend largely separate public schools is probably indicative of the majority's wishes. But if the Constitution requires an end to segregation in the public schools, it is important that all families have access to legal counsel. This would not ensure that each family gets what it wants, but it is essential for families to understand what is required. Only if all have legal advice is settlement through a system of legal redress possible.

19. *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967), aff'd. sub nam; *Smuck v. Hobson*, 408 F. 2d. 175 (D.C.Cir. 1969), and ____F. Supp ____ (D.D.C. May 25, 1971)

20. See, generally, Coons, Clure and Sugarman, *Private Wealth and Public Education* (Harv. Univ. Press, Cambridge, 1970).

21. 293 F. Supp. 327 (N.D. Ill. 1968), aff'd. *sub nom*, *McInnis v. Ogilvie*, 394 U.S. 322 (1969); accord *Burruss v. Wilkerson*, 310 F. Supp. 572 (W.D. Va. 1969), aff'd *per curiam* 397 U.S. 44 (1970).

22. Most notable is *Serrano v. Priest*, (Sup. Ct. Cal. Aug. 30, 1971) where the court held that a funding scheme which "discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors," was an unconstitutional denial of equal protection.

23. See, e.g., *James v. Valtierra*, 91 S. Ct. 1331 (1971)

24. See Kirp and Yudof, "Whose Priorities for Educational Reform?", 6 Harv. Civ. Rts. Cir. Lit. Rev. 631 (1971).

25. See Coons, Clure and Sugarman, *op. cit*.

26. Title I also demands that parents have a say in how the additional money is used, and lawsuits challenging the school board's failure to consult them may facilitate consumer organization. Legal assistance can help yield a carefully constructed judicial decree or settlement which ensures that educationally-deprived children get greater school aid *and* that their parents have greater influence in school affairs.

27. See Kaufman, J., dissenting in *Johnson v. N. Y. State Dept. of Ed.*, ___ F. 2d ___ (2d Cir. 1971)

28. See, e.g., *Bond v. Ann Arbor School District*, 383 Mich, 683, 178 N.W. 2d. 484 (1970).

29. 262 U.S. 390 (1923)

30. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)

31. *Epperson v. Arkansas*, 393 U.S. 97 (1968)

32. *School District of Abbington v. Schempp*, 374 U.S. 203 (1963)

33. 319 U.S. 624, 637 (1943). In *Barnette*, the Court declared that a student could not be compelled to salute the flag in school when that salute contradicted his religious beliefs.

34. 393 U.S. 503 (1969)

35. cf. *Ordway v. Hargreaves*, 323 F. Supp. 1155 (D. Massachusetts, 1971) where a girl's pregnancy was held an insufficient justification for exclusion from public school.

36. See *Dixon v. Alabama*, 294 F. 2d 150 (5 Cir., 1961), cert. den. 368 U.S. 930 (1961); *Vought v. Van Buren Public Schools*, 306 F. Supp. 1388 (E.D. Mich. 1969); *Marlego v. Bd. of School Dir. of Milwaukee* C.A. No. 70-C-8 (E.D. Wis.); *Stewart v. Phillips* C. A. No. 70-1199-F (D. Mass. Feb. 8, 1971)

37. Pennsylvania Assn. for Retarded Children v. Comm. of Pennsylvania, Cir. No. 71-42, (E.D. Pa. June 18, 1971); Marlego, Stewart, supra.

38. Just such procedural safeguards have been ordered by a three-judge court for all the public schools in Pennsylvania whenever the child's educational status is altered by reason of asserted mental retardation. P.A.R.C., supra.

39. 269 F. Supp. 401 (D.D.C. 1967)

40. In P.A.R.C a provision that children who had not attained a mental age of 5 years could be prevented from "beginning" school was successfully challenged. In California v. State Board of Education, Spanish-speaking children, disproportionately assigned to special education classes on the basis of English language tests, won the right to be assigned to such classes only after taking a Spanish test normed against the Spanish-speaking population. Both cases involved the two-pronged equal protection-due process attacks. As both cases were settled by court approval and order there has been no opinion to clarify which clause of the 14th amendment affords greater protection.

41. See, e.g., Wolf v. Utah.

42. It is important to remember that learning how to use even bathroom facilities is important for the individual and society. In P.A.R.C. the Court ordered that residential facilities provide appropriate training and education for school-age consumers of their services.

43. In certain circumstances federal courts avoid considering a case by applying the doctrines of abstention, failure to exhaust state or administrative remedies, non-justiciability, lack of standing or ripeness, and mootness. See, generally, Hart and Wechsler, Federal Courts and the Federal System (1953). Some of these doctrines appear merely to shift the dispute from one forum to another; in practice, however, these non-decisions effectively blunt, delay, or otherwise deny plantiffs' claims. In public school litigation this is usually a defeat of the family's interest. See, e.g., Caldwell v. Craighead, 432 F. 2d 213 (6th Cir. 1970)

44. This is not to suggest that application of the "one-man, one-vote decree" has been free from difficulty. On the contrary, it is becoming clear that the Court is involved in a complex thicket, even if not one as "political" as imagined by Justice Frankfurter. See, e.g., Whitcomb v. Chavis, 91 S. Ct. 1858 (1971)